



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP (Tenant)
 FFL, OPRM-DR (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed the first application September 16, 2019 (the “Landlord’s First Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 04, 2019. The Landlord also sought to recover unpaid rent.

The Landlord filed a second application October 09, 2019 (the “Landlord’s Second Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2019. The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Tenant filed the application September 20, 2019 (the “Tenant’s Application”). The Tenant sought to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 04, 2019. The Tenant sought an order that repairs be made to the rental unit.

The Landlord appeared at the hearing with Legal Counsel. The Tenant appeared at the hearing.

The Tenant advised at the outset that she had vacated the rental unit in October. The Landlord withdrew the requests for an Order of Possession given the Tenant had vacated the rental unit.

The Tenant advised at the outset that she wanted to adjourn the hearing to have an advocate appear with her. I told the Tenant I would address the preliminary matters and service and then hear her request for an adjournment.

I explained the hearing process to the parties. The Landlord and Legal Counsel did not have questions. The Tenant said she was uncomfortable proceeding without an advocate. I again told the Tenant I would hear her request for an adjournment once I had addressed service. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

Legal Counsel for the Landlord confirmed receipt of the hearing package and evidence for the Tenant's Application.

The Tenant testified that she did not receive anything from the Landlord except a mold report.

I started addressing service of the Landlord's First and Second Application. While doing so, the Tenant again raised the adjournment issue. Given this, I heard the Tenant's request for an adjournment.

The Tenant testified as follows in relation to the adjournment request. There was mold in the rental unit. She has evidence of this. She needs an advocate to assist her. Her boyfriend died in the rental unit. She wants to submit evidence about the mold. She has a lot of evidence to submit. She had to move to a hotel. It was not possible for her to get an advocate for the hearing date.

The Landlord did not agree to adjourning the hearing.

I considered rule 7.9 of the Rules of Procedure. I denied the adjournment for the following reasons. The Tenant filed her application on September 20, 2019. The Tenant had almost two months to submit evidence and arrange for an advocate to attend the hearing to assist. The Tenant did not provide a valid basis for failing to submit evidence within the two-month time period between the application being filed and the hearing. Nor did the Tenant provide evidence showing she attempted to arrange for an advocate but was unsuccessful. This is the type of evidence I would

expect when a party seeks to adjourn a hearing on the basis that they were not able to arrange for an advocate prior to the hearing date.

Further, the Tenant's Application is a moot point given she vacated the rental unit. The Tenant cannot dispute a 10 Day Notice or seek an order for repairs to be made to the rental unit when she has vacated the rental unit. Therefore, the mold issue is not relevant to the issue before me which is unpaid rent.

Given the above, I found the following. I did not anticipate the adjournment would result in a resolution of this matter. I was not satisfied that the need for an adjournment did not arise from the Tenant failing to take the necessary steps to prepare for the hearing. I was not satisfied an adjournment was required to provide the Tenant a fair opportunity to be heard because the mold issue is a moot point, the Tenant had almost two months to submit evidence and arrange for an advocate and the issue before me is straightforward. I was satisfied an adjournment would prejudice the Landlord who filed the first application to recover unpaid rent two months prior to the hearing date.

As I was telling the parties that I would not allow an adjournment and why, the Tenant started crying. The Tenant would not communicate or advise if she was okay. The Tenant mentioned having a panic attack. I repeatedly asked the Tenant to take a moment to collect herself and advise if she was okay. The Tenant would not do so. I asked the Tenant to provide her location in the event the RTB had to call someone to attend and assist the Tenant. The Tenant said she would not give her address. The Tenant asked if she could go get her son. I told the Tenant she could. The Tenant's son joined the conference around 11:24 a.m. He advised that he is 17 years old. He advised that he could try to assist the Tenant with the hearing. He confirmed he was able to call for assistance if the Tenant required it for health reasons.

I explained the following to the Tenant and her son during the hearing. The Tenant and her son know the Tenant's health situation. I do not. I cannot give the Tenant permission to exit the conference call. If the Tenant needs to exit the conference call due to health issues, she can choose to do so. I will continue with the hearing, hear from the Landlord and make a decision based on the testimony provided. If the Tenant exits due to a health issue, she can seek a review and provide evidence that she had to exit due to a health issue.

I proceeded with the hearing and continued to hear the Landlord on service. Around 11:35 a.m., the Tenant and her son exited the hearing without warning or explanation. The Tenant never called back into the hearing. I proceeded in the Tenant's absence.

The Landlord and Legal Counsel provided the following testimony and submissions in relation to service.

The hearing package and evidence for the Landlord's First Application was hand delivered to J.S. on October 02, 2019. J.S. advised that the Tenant had moved out of the rental unit.

The hearing package and evidence for the Landlord's First Application was also sent by registered mail to the rental unit September 27, 2019. Tracking Number 1 was provided in relation to this. I looked this up on the Canada Post website which shows the package was delivered and signed for by J.S. October 01, 2019.

The hearing package for the Landlord's Second Application could not be served on the Tenant because the Landlord did not have the Tenant's forwarding address.

The Landlord did not know the Tenant had vacated the rental unit until October 02, 2019 when J.S. told the Landlord the Tenant had. J.S. was the Tenant's boyfriend and lived at the rental unit with the Tenant.

Based on the testimony and submissions of the Landlord and Legal Counsel, as well as the Canada Post website information, I accept that the hearing package and evidence for the Landlord's First Application was sent to the rental unit by registered mail on September 27, 2019. Based on the Canada Post website information, I find the package was received at the rental unit October 01, 2019. I am satisfied the rental unit was still the Tenant's residence at this point given the following. The Tenant had not told the Landlord she was vacating prior to this date. The information that the Tenant had vacated as of October 02, 2019 came from J.S. and not the Tenant. At the hearing, the Tenant testified that she vacated the rental unit in October. In the circumstances, I am satisfied the hearing package and evidence were served on the Tenant in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). This is all the Landlord was required to do in relation to service. Further, I am satisfied the hearing package and evidence were served in sufficient time to allow the Tenant to prepare for the hearing.

The hearing package for the Landlord's Second Application was not served on the Tenant and therefore would usually be dismissed with leave to re-apply. However, the request for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2019 was withdrawn. Further, there was no need for the Landlord to file a second application in relation to further unpaid rent as the Landlord's First Application can be amended to include the full amount outstanding at the time of the hearing pursuant to rule 4.2 of the Rules of Procedure. The only remaining request on the Landlord's Second Application is a request for reimbursement for the filing fee. This request is dismissed without leave to re-apply for the following reasons. First, there was no need for the Landlord to file a second application as the issues raised in the Landlord's Second Application could have, and should have, been dealt with by amending the Landlord's First Application. Second, the Landlord did not serve the Tenant with the hearing package for this application as required and therefore the Landlord's Second Application cannot be heard. Given this, the Landlord was not successful on the Landlord's Second Application and is not entitled to reimbursement for the filing fee.

In relation to the Tenant's Application, this is dismissed without leave to re-apply for two reasons. First, the issues raised in it are moot points given the Tenant moved out of the rental unit. The Tenant can no longer dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 04, 2019 or seek an order for repairs to be made to the rental unit because she no longer resides at the rental unit. Second, the Tenant exited the conference call prior to me hearing the parties on the substantive issues and therefore I have no testimony from the Tenant as to the basis for her application. As well, rule 7.4 of the *Act* states that evidence must be presented by the party who submitted it. I decline to consider the Tenant's documentary evidence as the Tenant exited the conference call prior to presenting her documentary evidence. In the circumstances, I have no evidence from the Tenant as to the basis for her application.

Given the above, I have only considered the Landlord's First Application.

The Landlord and Legal Counsel were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I will only refer to evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started July 01, 2019 and is for a fixed term of one year. Rent is \$1,850.00 per month due on the first day of each month. The Tenant paid a \$925.00 security deposit and \$925.00 pet damage deposit. The agreement is signed by the Landlord and Tenant.

The Landlord sought to keep the security deposit and pet damage deposit towards unpaid rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 04, 2019 (the "Notice") was submitted as evidence. It states that the Tenant failed to pay \$1,850.00 in rent due September 01, 2019. The Landlord testified that this was served on the Tenant.

The Landlord testified that the Tenant did not pay September rent and has not paid any rent since. The Landlord confirmed she is seeking to recover unpaid rent for September and October. The Landlord testified that she did not have possession of the rental unit until October 17, 2019.

Legal Counsel submitted that the Tenant did not have authority under the *Act* to withhold rent.

Analysis

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for...loss that results.

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Based on the written tenancy agreement in evidence, I accept that the Tenant was required to pay \$1,850.00 in rent per month by the first day of each month.

Based on the undisputed testimony of the Landlord, I accept that she did not know the Tenant had vacated the rental unit until October 02, 2019 when J.S. told the Landlord this.

Further, the Tenant testified that she vacated the rental unit in October and therefore I am satisfied the Tenant resided in the rental unit for a portion of October.

Based on the undisputed testimony of the Landlord, I accept that the Landlord did not get possession of the rental unit back until October 17, 2019.

In the circumstances, I am satisfied the Tenant was required to pay rent for September and until October 17, 2019.

Based on the undisputed testimony of the Landlord, I accept that the Tenant did not pay rent for September or October. I find this is somewhat supported by the Notice.

Legal Counsel submitted that the Tenant did not have authority under the *Act* to withhold rent.

There was mention by both parties about mold in the rental unit. I note that the presence of mold in the rental unit is not a basis for a tenant to withhold rent under the *Act*.

The Tenant exited the conference call prior to testifying or presenting documentary evidence about the unpaid rent issue. Therefore, I have no evidence before me that the Tenant had authority under the *Act* to withhold rent for September and October.

I am satisfied the Tenant did not have authority under the *Act* to withhold rent.

Given the above, I find the Tenant owes the Landlord \$1,850.00 in rent for September. I find the Tenant owes the Landlord \$1,014.39 in rent for October ($\$1,850.00 / 31 = \$59.67 \times 17 = \$1,014.39$). I amend the Landlord's First Application to reflect the full amount owing pursuant to rule 4.2 of the Rules of Procedure. The Landlord is entitled to recover \$2,864.39 in unpaid rent.

The Landlord can keep the \$925.00 security deposit and \$925.00 pet damage deposit towards unpaid rent pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining amount of \$1,014.39.

Conclusion

The Landlord is entitled to recover unpaid rent in the amount of \$2,864.39. The Landlord can keep the \$925.00 security deposit and \$925.00 pet damage deposit. I issue the Landlord a Monetary Order for the remaining amount of \$1,014.39. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 20, 2019

Residential Tenancy Branch