



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT LRE MNDCT MT OLC RP RR
FFL OPRM-DR

Introduction

This hearing was convened by way of conference call concerning amended applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for the following relief:

- more time than prescribed to dispute a notice to end the tenancy;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act* or the tenancy agreement;
- an order that the landlord make repairs to the rental unit or property; and
- for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant advised that the tenancy agreement and the tenant's application have different names for the tenant, however they are the same person. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the parties agreed that the tenant has not provided the landlord with any of the tenant's evidentiary material. The tenant believed the Residential Tenancy Branch would provide the tenant's evidence to the landlord.

The Rules of Procedure require that parties exchange evidence. Since the tenant has not done so, I decline to consider any of the tenant's evidence. The tenant also advised that the Amendment was served to the landlord by text message. That is not an acceptable method of service, and I decline to consider the tenant's amendment.

The tenant also indicated that she has not received any of the landlord's evidence or the landlord's application. The landlord has provided proof that the material was served to the tenant by registered mail on October 16, 2019 which is addressed to the tenant at the rental unit. The *Act* specifies that documents served in that manner are deemed to have been received 5 days after mailing. All evidence of the landlord has been reviewed and is considered in this Decision.

Also, the Rules of Procedure require that multiple applications in a single Application for Dispute Resolution must be related. In this case, I found that the primary applications concern the notice to end the tenancy, and I advised the parties that the balance of the tenant's application will not be dealt with in this hearing.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established reasonable grounds for more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on August 1, 2019, expiring on August 1, 2021, however the tenant never actually resided in the rental unit. Rent in the amount of \$1,800.00 per month is payable on the 1st, 2nd or 3rd of each month. The landlord did not collect a security deposit or a pet damage deposit. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided by the landlord as evidence for this hearing.

The landlord further testified that on October 2, 2019 he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail, and a copy has been provided for this hearing. It is dated October 2, 2019 and contains an effective date of vacancy of October 17, 2019 for unpaid rent in the amount of \$4,600.00 that was due on October 1, 2019. The tenant paid the landlord \$800.00 only and currently owes \$6,400.00 for rent for August through November, 2019. There have also been other 10 Day Notices served to the tenant.

The landlord seeks monetary compensation in the amount of \$6,500.00 including recovery of the filing fee and vacant possession of the rental unit.

The tenant testified that she did move her belongings into the rental unit but has not resided there.

The landlord dropped off a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities at the rental unit, which the tenant received 3 or 4 days later.

The tenant also testified that he gave the landlord \$2,900.00 in cash on or about July 26, 2019. The landlord wanted the first and last month's rent and said he needed the money right away if the tenant was going to move in. The tenant only had \$2,900.00 and the parties agreed that the tenant would remove debris from a previous tenancy, which she did, and the landlord would discount rent by about \$600.00. The tenant did not pay any other rent; the rental unit required numerous repairs and is not in a liveable condition. The tenant feels there should be some compensation awarded to the tenant.

Analysis

Firstly, the tenant has applied for more time than prescribed to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice). The landlord testified that it was served by registered mail on October 2, 2019, which is deemed to have been served 5 days later. However, the tenant's application was filed prior to that, on September 20, 2019. I'm not convinced that the tenant's application refers to the Notice for which the landlord has applied for an Order of Possession, or whether or not the tenant has disputed that Notice.

The *Residential Tenancy Act* specifies that a tenant has to pay the rent even if the landlord fails to comply with the *Act* or the tenancy agreement. The *Act* also specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice. In this case, the tenant

agreed that she has not continued to pay rent, but disputed a Notice. However, since the tenant has not paid the rent, I see no reason to cancel the Notice. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, and therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the landlord's monetary claim for unpaid rent, the landlord testified that the tenant only ever gave the landlord \$800.00, which is disputed by the tenant who testified that she gave the landlord \$2,900.00. The parties also agreed during the hearing that there was an agreement to reduce the rent owed in exchange for the tenant removing debris from a previous tenancy, and other considerations. I have reviewed the text messages provided by the landlord as evidence for this hearing, as well as other evidence, and I am not satisfied that the landlord has established how much money was received for rent. There are no receipts and no Tenant Ledger or any other records to establish the claim. The tenancy agreement says rent is \$1,800.00 per month, and I give the benefit of the doubt in favour of the tenant. I find that the landlord has established a claim of \$3,650.00 for unpaid rent (\$1,800.00 x 4 months August through November = \$7,200.00 - \$650.00 for removing debris - \$2,900.00 paid by the tenant = \$3,650.00).

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Since the tenancy is ending I dismiss the tenant's applications without leave to reapply for:

- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Act* or the tenancy agreement;
- an order that the landlord make repairs to the rental unit or property; and
- for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed with leave to reapply.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,750.00.

The tenant's applications for the following relief are dismissed without leave to reapply:

- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act* or the tenancy agreement;
- an order that the landlord make repairs to the rental unit or property; and
- for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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

Dated: November 27, 2019

Residential Tenancy Branch