



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC MNR MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application for dispute resolution including all evidence before me.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession pursuant to a One Month Notice to End Tenancy for Cause (the One Month Notice)?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on January 1, 2017. The current monthly rent is \$950.00 payable on the 1st day of each month. By way of an e-mail dated August 6, 2019 the landlord notified the tenant of a rent increase of \$22.35 effective January 1, 2020. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on July 26, 2019 she served the tenant with the One Month Notice by posting a copy to the door of the rental premises. A Proof of Service form of the Notice to End Tenancy was provided on file. The effective date of the One Month Notice was August 31, 2019.

The tenant acknowledged receipt of the One Month Notice. The tenant did not vacate the rental unit as per the effective date of the Notice or file an application to dispute the One Month Notice. Rather, the tenant testified that she had a verbal discussion with the landlord by which the landlord provided her a second chance to correct the issues identified on the One Month Notice. The tenant testified that this is supported by the fact that the landlord has continued to collect rent for months after the effective date of the Notice and has continued to issue other notices since.

The landlord denies giving the tenant another opportunity and testified that she only gave the tenant an additional month until end of September 2019 to move out.

Analysis

I am satisfied that the tenant was served with the One Month Notice on July 26, 2019 as confirmed by the parties.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Under this section, the tenant may make a dispute application within ten days of receiving the One Month Notice. If, as in the present case, the tenant does not make an application for dispute within ten days, the

tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice.

However, based upon the testimony and evidence submissions on file I find that the landlord reinstated the tenancy sometime after issuing this One Month Notice on July 26, 2019. The landlord's own evidence submission contained an e-mail dated August 6, 2019 notifying the tenant of a rent increase effective January 1, 2020. This e-mail was sent to the tenant after the issuance of the One Month Notice. This is not consistent with the landlord's testimony that she only provided the tenant with an additional month to move out. I accept the tenant's testimony and find that the landlord reinstated the tenancy after a verbal discussion with the tenant. The landlord's submissions also contain a second One Month Notice dated August 23, 2019 with the same effective date of August 31, 2019. This further supports the tenant's testimony that the landlord had cancelled the original notice.

I find this tenancy was reinstated after the tenant was served the One Month Notice dated July 26, 2019. The landlord's application for an order of possession is therefore dismissed.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed.

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 29, 2019

Residential Tenancy Branch