



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONAYT FRIENDSHIP SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and authorization to retain the security deposit in partial satisfaction of unpaid rent. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord served its hearing documents upon the tenant in person and via registered mail.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord authorized to retain the tenant's security deposit in partial satisfaction of unpaid rent?

Background and Evidence

The tenancy started on June 1, 2018 and the landlord collected a security deposit of \$317.50. The monthly rent set for this unit is \$845.00; however, the tenant is only required to pay a portion of rent, based on income.

The tenant's monthly rent obligation varied and at times it was \$635.00, \$480.00 and \$320.00. The landlord submits that the tenant did not pay any rent during the tenancy. The tenant approached the landlord about her inability to pay the monthly rent and the landlord retroactively reduced the monthly rent obligation to \$320.00, the minimum amount payable under their operating agreement. Despite lowering the monthly rent, the

tenant did not pay any rent and on October 2, 2019 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

The 10 Day Notice was served upon the tenant in person on October 2, 2019 and sent to the tenant via registered mail on October 2, 2019. The 10 Day Notice indicates the tenant owed \$5,440.00 in rent as of October 1, 2019 and had a stated effective date of October 12, 2019.

The tenant acknowledged receiving the 10 Day Notice and acknowledged that she did not file an Application for Dispute Resolution to dispute the 10 Day Notice.

The tenant claimed to have paid \$2,500.00 in cash to the landlord's agent in February 2019 and that payment was to satisfy rent for February 2019 through to July 2019. The landlord acknowledged the tenant had made this statement to her in August 2019 and she searched all of the landlord's records and could find no record of such a payment. The tenant acknowledged that she did not have a receipt for the payment.

The tenant acknowledged that some rental arrears are owing and explained that a very being a single mother of three children, a student, high hydro bills, among other living expenses, resulted in her not being able to pay rent.

The tenant attributed the high hydro bill to a leaking hot water tap. The tenant acknowledged that she did not approach the landlord about her high hydro bill and inability to pay rent as a result of the hydro bill. The landlord stated the tenant first mentioned the high hydro bill on August 12, 2019 and when the landlord sent maintenance personnel in the unit to inspect the plumbing the hydro was disconnected. BC Hydro subsequently reconnected the hydro service and put the hydro bill in the landlord's name.

The tenant proposed the tenancy continue if the parties were to enter into a payment plan. The landlord was not receptive to a payment plan given the length of time that had passed without payment.

The landlord requested an Order of Possession effective 7 days after service. The tenant proposed that she be permitted occupancy until the end of December 31, 2019 with the promise to pay \$320.00 by December 10, 2019 at 5:00 p.m. The landlord was agreeable to this proposal.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not presented any evidence to suggest the tenant had a legal right to withhold rent. Having an outstanding maintenance issue is not a basis for withholding rent until the tenant has the landlord's consent to do so or the prior authorization of an Arbitrator. Nor, is the inability to pay rent a basis for withholding rent from the landlord.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the evidence before me that the landlord reduced the tenant's monthly rent obligation to a lesser amount of \$320.00 in an effort to work with the tenant and reduce the rental arrears. I also accept that the tenant was personally served with a 10 Day Notice on October 2, 2019. Accordingly, I find the tenant had until October 7, 2019 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended 10 days after the 10 Day Notice was received, or October 12, 2019. Therefore, I find the tenancy has ended and the landlord is entitled to an Order of Possession.

Based on the parties' agreement during the hearing, I provide the landlord with an Order of Possession effective December 31, 2019 that may be served and enforced in any event. I also provide the landlord with a conditional Order of Possession effective 7 days after service. The conditional Order of Possession may be served and enforced only in the event the tenant fails to present \$320.00 to the landlord by 5:00 p.m. on December 10, 2019.

As for the landlord's monetary claim, I am satisfied the tenant owes the landlord rent far in excess of the security deposit even if the tenant did pay \$2,500.00 in February 2019, which I do not believe given the tenant's self-described financial difficulties and lack of

corroborating evidence. I also award the \$100.00 filing fee to the landlord. Therefore, I grant the landlord's request to retain the tenant's security deposit to be applied to recovery of the \$100.00 filing fee and the balance of \$217.50 toward the unpaid rent.

If the landlord seeks to pursue the tenant for unpaid rent or other losses beyond the security deposit that I have authorized above, the landlord may file another Application for Dispute Resolution.

Conclusion

The tenancy had ended for unpaid rent. The landlord is provided an Order of Possession effective December 31, 2019 that may be served and enforced in any event. The landlord is also provided a conditional Order of Possession effective 7 days after service that may only be served in the event the tenant fails to pay \$320.00 to the landlord by 5:00 p.m. on December 10, 2019.

The landlord is authorized to retain the tenant's security deposit to recover the filing fee and \$217.50 toward the unpaid rent.

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: December 06, 2019

Residential Tenancy Branch