



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that he had permission to represent the landlord named in this application, as an agent at this hearing. This hearing lasted approximately 28 minutes.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on October 27, 2019, by way of registered mail to the rental unit. The landlord's agent provided a Canada Post tracking number verbally during the hearing.

The tenant stated that she did not receive the landlord's application and she was not living at the rental unit during the time of service. The tenant said that she did not provide an alternate service address to the landlord in writing, but he knew she was living elsewhere at a different address. The landlord's agent denied same. The tenant claimed that she found out about the hearing and sent evidence to the landlord and the RTB online, because she received an email from the RTB directly regarding the hearing.

In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 1, 2019, five days after its registered mailing.

I find that the tenant did not provide the landlord with an alternate service address in writing, and the landlord's agent said that he did not know the tenant was living elsewhere or had a different service address. I also find that the tenant was still occupying the rental unit at the time of service, as she confirmed that her belongings were still there, since she did not vacate until the end of November 2019.

I note that the tenant had an opportunity to respond to the landlord's application, as she submitted her own evidence. The tenant was also aware that the landlord was seeking an end to her tenancy because both parties agreed that they had a previous RTB hearing on November 7, 2019. That hearing was initiated by the tenant's application to cancel the same 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 23, 2019 ("10 Day Notice"), as in this hearing, regarding the landlord's request for an order of possession. The file number for that hearing appears on the front page of this decision. I find that the tenant was aware of the unpaid rent that she owed the landlord, which she agreed to during the hearing.

The landlord's agent confirmed receipt of the tenant's evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's evidence.

At the outset of the hearing, both parties confirmed that the tenant had vacated the rental unit. The landlord confirmed that he did not require an order of possession, as he had already received one at the previous RTB hearing on November 7, 2019. Accordingly, the landlord's application for an order of possession is dismissed without leave to reapply.

Preliminary Issue – Jurisdiction to hear Application

The tenant stated that the RTB did not have jurisdiction to hear the landlord's application because it was not a residential tenancy. She claimed that she is a co-owner of the rental unit, as she purchased the unit with the landlord named in this application. The tenant explained that she did not have any written proof of her ownership, such as a purchase and sale agreement or a title search. She confirmed that she paid \$15,000.00 in October 2018, towards the purchase price of the rental unit

but she had no written proof of same. She maintained that she signed the written tenancy agreement with the landlord for his “parents’ sake.” She agreed that she filed an RTB application to cancel the landlord’s 10 Day Notice, which was heard on November 7, 2019, but claimed that she did not attend that hearing. She said that she only filed the application because she had to respond to the landlord’s notice. She explained that she was going to Court to file a civil claim against the landlord.

The landlord’s agent disputed the tenant’s allegations. He maintained that the RTB has jurisdiction to hear the landlord’s application. He claimed that the tenant provided no documentary evidence to show that she owns the rental unit, the landlord told him that he is the only owner of the rental unit, and the tenant is a renter, since she signed the tenancy agreement with the landlord.

I notified both parties that I had jurisdiction to hear this matter at the RTB, as I find it is a residential tenancy under the *Act*. I find that the tenant is a proper tenant under the *Act*, renting the rental unit from the landlord, who is the only owner of the rental unit. I find that the tenant failed to provide sufficient documentary evidence that she is an owner of the rental unit. The tenant did not provide a purchase and sale agreement, a title search, bank records or other such documents to show that she owns or purchased the rental unit. The tenant signed the tenancy agreement with the landlord to rent it from him at a monthly rental rate of \$1,800.00. The tenant disputed the 10 Day Notice, issued by the landlord, at the RTB and did not contest it in the Court system.

Preliminary Issue - Amendment to Landlord’s Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to increase the landlord’s monetary claim to include November 2019 rent of \$1,800.00. The landlord requested this amendment and the tenant did not object to same.

The tenant is aware that rent is due on the first day of each month. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord’s claim for increased rent.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019. The tenancy ended at the end of November 2019, although neither party knew the exact date. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. No security deposit was paid by the tenant. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$5,400.00 plus the \$100.00 application filing fee. The landlord seeks rent of \$1,800.00 for each month of September, October and November 2019, totaling \$5,400.00. He said that the tenant was living in the rental unit during the above months and failed to pay the rent.

The tenant stated that she was not living at the rental unit during the entire tenancy because she was uncomfortable with the 10 Day Notice given to her by the landlord in September 2019. She said that she was staying at another residence but claimed that no one else could live at the rental unit because her belongings were still there. The tenant agreed that she failed to pay October and November 2019 rent, totalling \$3,600.00. She claimed that she paid the September 2019 rent of \$1,800.00 in cash, which she borrowed from someone else but said that she did not have documentary proof of same.

Analysis

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the

Act places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenant was living in the rental unit from September 1, 2019 until the end of November 2019. Even though the tenant claimed that she was living elsewhere, she agreed that her belongings were still in the rental unit until she vacated at the end of November 2019, and that no one else could live in the rental unit during that time.

I find that the tenant failed to pay rent of \$1,800.00 for September 2019 to the landlord. The tenant did not provide documentary proof of same, such as a rent receipt, bank documents, a witness letter saying she borrowed and paid the money to the landlord, or other such proof. Both parties agreed that the tenant failed to pay rent of \$1,800.00 for each of October and November 2019, totaling \$3,600.00. Accordingly, I find that the landlord is entitled to rental arrears of \$5,400.00 total, from the tenant.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,500.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for an order of possession is dismissed without leave to reapply.

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 12, 2019

Residential Tenancy Branch