



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

After serving the tenant with the Notice of Dispute Resolution Proceeding and Application for Dispute Resolution, the tenant vacated the rental unit. The landlord submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch to seek a Monetary Order for the unpaid rent for October 2019; however, the landlord did not serve the Amendment upon the tenant. The tenant stated that he understood the purpose of today's hearing was to deal with the unpaid rent for October 2019 and he was prepared to respond to the landlord's claims for unpaid rent. In this circumstance, I permitted the application to be amended during the hearing to deal with a monetary claim for unpaid rent.

Since the tenant has already vacated, an Order of Possession is no longer required, and I do not provide one with this decision. The remainder of this decision deals with the landlord's monetary claim against the tenant for unpaid rent.

During the hearing, the tenant stated that he had paid the former owner of the property, who is now deceased, a security deposit of \$900.00 in cash and that he did not receive a receipt from the former owner. Although the tenant had no proof of such a payment, the landlord was willing to concede that it may be possible the tenant paid such a security deposit considering she had not found any paperwork related to the tenancy in the deceased effects and the landlord wishes to avoid a future proceeding on the issue of a security deposit. As such, the landlord was willing to give the tenant credit for the

amount of the security deposit he claims to have paid and requested that it be offset against the rent he owes. I amended the application accordingly.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent for October 2018?
Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

It was undisputed that a tenancy agreement between the tenant and the former owner, who is now deceased, started in November 2018. It was undisputed that the tenant was required to pay rent of \$1,800.00 on the first day of every month pursuant to their tenancy agreement. The tenant claims to have paid a security deposit of \$900.00 and the named landlord, who is the executor of the deceased owner's estate, is willing to give a concession to the tenant that he paid the deposit as he claims.

The parties provided consistent testimony that the former owner died in late August 2019 and the landlord named in this Application for Dispute Resolution took over administration of the estate of the deceased including the rental unit.

I heard the rental unit was the main living accommodation of a house and the former owner had occupied a self contained basement suite on the property.

The tenant did not pay rent when due for September 2019 and the landlord served the tenant with two notices to end tenancy: a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause. After being served, the tenant paid the rent owed for September 2019 but did not file to dispute the 1 Month Notice. The 1 Month Notice had a stated effective date of October 31, 2019.

The tenant did not pay rent for October 2019 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on October 2, 2019. A process server delivered the 10 Day Notice to the tenant's daughter and another adult female at the rental unit on October 4, 2019. The tenant did not pay the outstanding rent after receiving the 10 Day Notice in October 2019. The tenant moved out and gave up possession of the rental unit on or about November 4, 2019.

The landlord seeks to recover the unpaid rent of \$1,800.00 for the month of October 2019.

The tenant provided various reasons in an attempt to justify withholding of rent for October 2019, including:

- the cable that had been provided to him by the deceased owner was terminated by the executor although the executor did have a new cable account established for the tenant's use and the tenant did not suffer a loss of cable;
- the executor and other family members had unplugged the air conditioner and it was not reconnected until the following day;
- the tenant offered to clean up the biological matter in the deceased owner's unit for the executor and other family members as he was out of work;
- the deceased would often allow the tenant to pay rent late because he understood the tenant was having financial difficulties;
- the executor accused the tenant of stealing items belonging to the deceased; and,
- the executor should have served him with a 2 Month Notice to End tenancy for Landlord's Use of Property so that he would have two months notice to vacate and one free month of rent.

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.

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. A 10 Day Notice was served on October 4, 2019 and the tenant did not pay the rent or dispute the 10 Day Notice, meaning the tenancy legally ended on October 14, 2019.

Where a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to file an Application for Dispute Resolution to dispute the 1 Month Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy shall end on the effective date of the 1 Month Notice, as provided under section 47(5) of the

Act. The tenant had been served with a 1 Month Notice in September 2019 that he did not dispute and the tenancy was set to end by October 31, 2019 in any event.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1,800.00 every month and he failed to do so for October 2019; yet, he had use and possession of the unit in the month of October 2019. The excuses for not paying rent for October 2019 are not a legal basis for withholding rent under the Act. The Act provides very limited circumstances when a tenant may legally pay withhold rent and the tenant did present any circumstance that would entitle him to withhold rent for October 2019. Therefore, I grant the landlord's request to recover unpaid rent from the tenant in the amount of \$1,800.00.

The tenant claimed to have paid a security deposit of \$900.00 and the landlord was prepared to give concession to the tenant in this regard to avoid a future dispute concerning a security deposit. As such, I shall authorize the landlord to retain the tenant's security deposit and I provide the landlord with Monetary Order for the net balance owing of \$900.00 to serve and enforce upon the tenant.

Conclusion

The landlord is awarded recovery of unpaid rent of \$1,800.00 for October 2019. The landlord is authorized to retain the tenant's \$900.00 security deposit and the landlord is provided a Monetary Order for the balance outstanding of \$900.00 to serve and enforce upon the tenant.

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 13, 2019

Residential Tenancy Branch