



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

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

- an order of possession pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,265 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by its office manager ("**EG**") and its building manager ("**KW**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called one witness, its relief manager ("**NR**").

This matter was originally made by the landlord by way of a direct request. The direct request application was adjudicated, and the landlord obtained the relief sought. The tenant then sought a review of the direct request decision, and the reviewing arbitrator remitted this matter to a participatory hearing.

The matter had previously come to a hearing before me on November 29, 2019. I issued an interim decision following that hearing. In it, I adjourned the hearing so as to grant the tenant the time ordered by the review arbitrator to review the landlord's documentary evidence. At the present hearing, the tenant testified that following the hearing she had sufficient time to review the landlord's documentary evidence.

I also granted the tenant leave to submit evidence responsive to the landlord's evidence no later than seven days prior to this hearing.

Preliminary Issue – Tenant’s Documentary Evidence.

The tenant testified that she served the landlord with copies of her response evidence by sliding it under the door of the landlord’s office. The KW testified that she did not receive any documents from the tenant served this way. During the hearing, I noted to the tenant that section 88 of the Act does not permit service of documents by sliding them under the door. The tenant then testified that she misspoke, and actually put them through the mail slot of the office door. KM confirmed the office door has a mail slot, but testified that, still, she did not receive any of the documents from the tenant.

I reviewed the tenant’s response evidence and determined that the majority of the documents were either written submissions of the tenant or commentary notes written on documents provided to her by the landlord (none of which would have needed to be served on the landlord in advance of the hearing). The only documents that are of a class that is required to be served in advance of the hearing are documents relating to the sending of a piece of registered mail to the landlord. The landlord consented to these documents being admitted into evidence.

I note that the tenant also entered into evidence several documents in support of her review application, which I understand were served on the landlord in advance of the November 29, 2019 hearing.

As such, I will consider all documents submitted by the tenant in advance of this hearing.

Preliminary Issue – Order of Possession

The parties agree that the tenant no longer resides at the rental unit. The exact date of when the tenant vacated the rental unit is at issue, but the parties both agree that an order of possession is no longer required by the landlord.

As such, I dismiss the landlord’s application for an order of possession, without leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,265; and
- 2) recover its filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 1, 2009. At the end of the tenancy monthly rent was \$1,265 and was payable on the last day of each month. The tenant paid the landlord a security deposit of \$537. The landlord still retains this deposit.

The basis for the landlord's claim is straightforward. EG testified that the tenant vacated the rental unit on August 12, 2019 and did not pay any rent for the month of August. She testified that the tenant did not give any notice of her intention to vacate the rental unit. She additionally testified that, due to the state the rental unit was left in, she was not certain if the tenant was going to return to rental unit, as a number of personal items, food, and furniture were left in the rental unit.

EG testified that the landlord received the tenant's rental unit keys and door fob on August 12, 2019, which is why she understands that the tenant vacated the rental unit on that date. The tenant denies the fobs and keys were returned on August 12, 2019. She testified that she returned them on July 31, 2019.

The tenant testified that she vacated the rental unit on July 31, 2019. She admits that she did not pay monthly rent for August 2019. She argued that August rent is not owing, as she vacated the rental unit prior to the start of August 2019. She testified that she moved out in accordance with the wishes of the landlord. She testified that she was served with a one month notice to end tenancy (the "**One Month Notice**") on July 25, 2019, which listed an effective date of August 31, 2019. The One Month Notice was issued, she testified following a dispute with the landlord about whether she could keep a dog in the rental unit.

The tenant entered a letter from KW dated May 15, 2019 into evidence stated that the landlord had learned that the tenant was caring for a dog in the rental unit, and that such conduct was in breach of the tenancy agreement. In this letter, KW requested

proof that the dog was a registered and certified service dog (the keeping of which is be permitted under the tenancy agreement).

The tenant testified that she provided the landlord with a doctor's note dated May 27, 2019 (which was entered into evidence) stating the tenant "is permanently disabled due to chronic medical conditions. In addition, she needs to keep her dog as it provides emotional support and promotes regular exercise. Her dog is necessary for her to maintain her health."

The tenant did not submit any evidence regarding whether the dog was a registered and certified service dog.

The tenant entered into evidence a letter from KW dated June 1, 2019 (the "**June Letter**"), in which KW wrote:

As we have had no response to our letter dated May 15, 2019 with regards to the necessary legal documentation required to have a service pet, we now conclude that you are caring for a pet in your apartment. As you are aware the company has a strict "no pets" policy. The rental agreement you signed dated 7th January, 2009 has a clause (paragraph 4, page 4) that very specifically excludes the keeping or feeding of pets. This clause is a significant term of the rental agreement and one for which we make no exceptions.

We realize that it is not easy to find a new home for a family pet and therefore will allow you two (2) months notice that the pet must be removed from the apartment building. We trust that this is sufficient time for you to find it a new home.

If you are unable to place the pet before July 31, 2019, we will have no option but to issue a 30 Day Notice to End a Residential Tenancy.

In her testimony the tenant characterized this letter as a "two-month notice".

She testified that she and her husband decided they would leave the rental unit at the end of June 2019. She testified that she had a conversation with KW in KW's office on June 30, 2019 and told KW that she intended to vacate the rental unit on July 31, 2019.

KW denied this conversation occurred. The tenant admitted that she has no written confirmation that she advised KW of this.

The tenant submitted a letter dated September 11, 2019 from a resident manager of another apartment complex which states that the tenant moved into a rental unit in her apartment complex on July 31, 2019.

The parties made a number of other submissions relating to alleged unauthorized access into the rental unit, the condition of the rental unit at the end of the tenancy, and conversations between the relief manager (who was called as a witness) and the tenant. For the reasons stated below, it is not necessary for me to recount these submissions here.

The tenant argued that the landlord's agents were not credible, and, as such, I should prefer her oral testimony over theirs. The tenant bases this argument on the fact that, at the November 2019 hearing, EG testified that the landlord was unable to serve the tenant with their documents in a timely fashion in advance of the November 2019 hearing because the only address the landlord had for service was the forwarding address provided to them by the tenant in an August 21, 2019 letter of a lawyer's office. The lawyer refused service multiple times. The tenant argued that the EG was being untruthful, as the envelope she used to send the landlord the notice of hearing (issued following the review consideration) bore her personal mailing address.

EG testified that she discarded the envelope, as there was no indication from the contents of the envelope that the tenant's address for service would not be the same as the forwarding address previously provided.

Analysis

1. Credibility of the Landlord's Agents

I am wholly unpersuaded by the tenant's arguments that the landlord's agents were lying or attempting to deceive me at the November 2019 hearing. I find that, at the time the landlord received the notice of hearing, its agents had no reason not to think that the tenant could not be served at her lawyer's office. If the circumstances were otherwise, the tenant had an obligation to notify the landlord of this.

As such, I can see no reason why the landlord's agents ought to have noted the sender's address on the envelope containing the notice of hearing. Accordingly, I do not find that the landlord's agents were not being dishonest in their testimony at the November 2019 hearing when they stated that they had not received the tenant's mailing address. I find that they were mistaken (and indeed were unaware of this until the tenant mentioned it at the November 2019 hearing), but that this mistake was not attributable to any fault of their own. Such circumstances do not cause me to doubt the landlord's agents' credibility.

2. Monetary Claim of Landlord

Based on the evidence of the parties, I find that the tenant was served with the One Month Notice on July 25, 2019. I find that the Notice had an effective date of August 31, 2019.

I find that the tenant received a letter from the landlord on June 1, 2019 (the "**June Letter**"), in which the landlord alleged the tenant was in breach of the tenancy agreement by keeping a dog in the rental unit, and that, if the tenant did not "find a new home" for the dog by July 31, 2019, they would issue a One Month Notice to End Tenancy.

I do not find that the June Letter amounts to giving the tenant notice that the tenancy was ending. A notice to end tenancy from a landlord must be in the proscribed form, per sections 46, 47, or 49 of the Act. In any event, the June Letter clearly states that the tenancy would only be ended if the pet was not relocated and, if it was not, that the landlord would give the tenant notice that the tenancy would be ended.

As such, I find that the earliest the tenancy can be found to have been ended by an action of the landlord is on the effective date of the One Month Notice: August 31, 2019.

Section 45 of the Act, however, allows a tenant to end a tenancy. It states:

Tenant's notice

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[...]

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

[emphasis added]

As such, in order for the tenant to have ended the tenancy on July 31, 2019, she must have given *written* notice to the landlord of her intention to do so no later than June 30, 2019.

Based on the evidence before me I find that the tenant did not do this. The tenant has testified that she gave verbal notice to KW at the end of June 2019 of her intention to end the tenancy on July 31, 2019. KW denied this. It is not necessary for me to determine whether this occurred or not, as, even if it did, this would not be sufficient to meet with the form and content requirements of section 52 of the Act.

As such, I find that the tenancy did not end until August 31, 2019 (regardless of whether the tenant vacated the rental unit on July 31, 2019), and the tenant is required to pay rent for the month. I order that the tenant pay the landlord \$1,265 in satisfaction of this amount.

As the landlord has been successful in its application, I order that the tenant reimburse the landlord its filing fee (\$100).

Pursuant to section 72(2) of the Act, the landlord may retain the tenant's security deposit (\$537) in partial satisfaction of the monetary orders made.

Conclusion

I order that the tenant pay the landlord \$828, representing the following:

August Rent	\$1,265
Filing Fee	\$100
Security Deposit Credit	-\$537
Total	\$828

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: January 16, 2020

Residential Tenancy Branch