



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. A Monetary Order for damages to the unit - Section 67.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence package in person on March 31, 2020 in accordance with Section 89 of the Act. The Landlord did not have a witness for this service. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord confirms that the Tenant is still residing in the unit and that the damage claim is in relation to damages made to the unit.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the tenancy has not ended, I consider that the Tenant still has time to repair any damages to the unit that were caused by the Tenant or the Tenant's guests. Further the damage to the unit is not related to unpaid rent or whether the tenancy will end. I therefore dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the notice to end effective to end the tenancy?

Is the notice to end tenancy valid?

Is the Landlord entitled to the unpaid rent claimed?

Background and Evidence

There is no written tenancy agreement. The tenancy started 15 years ago with rent of \$700.00 per month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit. In a notice of rent increase dated June 1, 2019 the Landlord increased the rent by \$100.00 for monthly rent of \$800.00 due September 1, 2019. The Landlord collected \$800.00 as monthly rent on at least one occasion between September 2019 and February 2020, inclusive. The Landlord was only paid \$300.00 for February 2019 rent and on February 27, 2020 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") in person. The Notice sets out unpaid rent of \$500.00 from a total of \$800.00 in rent. On April 9, 2020 the Landlord received \$1,600.00 for rent. The Landlord provided a copy of the first page of the Notice only. The Landlord did not provide a monetary order worksheet or any accounting documents. The Landlord claims an order of possession and unpaid rent of \$500.00.

Analysis

Section 43(1)(a) of the Act provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. The allowable rent increase for 2019 was 2.5%. Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. Based on the Landlord's evidence of the rent increase given to the Tenant I find that the Landlord increased the rent by an amount greater than allowed in September 2019. As such I find that this increase is not effective, and that the Tenant's rent remains at \$700.00 per month until it is increased in accordance with the Act and Regulations. Given the Landlord's evidence that the

Tenant made at least one overpayment of rent based on the rent increase and as the additional rent paid of \$1,600.00 may include the rent increase the Tenant is at liberty to deduct any monthly rents paid over \$700.00 from September 2019 to May 2020 inclusive or the Tenant may make an application to recover any over paid rental amounts.

Section 52(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form. The Notice served on the Tenant is not on the approved form. Further given the Landlord's evidence that the amount on the Notice indicated as unpaid rent includes the rent increase, I find that the Notice is neither effective to end the tenancy nor valid for the amount of rent owed by the Tenant. I therefore dismiss the Landlord's claim for an order of possession. As the rent claim also includes the rent increase for February 2020 that was not allowed under the Act, I find that the Landlord has not substantiated its rent claim for February 2020, and I dismiss this claim.

Conclusion

The Landlord's claims for an order of possession and unpaid rent is dismissed. The Landlord's claim in relation to damage to the unit is dismissed with 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 Act.

Dated: May 21, 2020

Residential Tenancy Branch