Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Summerhill 3 Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   **OPRM-DR, OPR-DR, FFL, MNDCL, MNSD**

Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on March 23, 2020 in response to the landlord's' Application for Dispute Resolution by Direct Request for an Order of Possession and Monetary Order for unpaid rent.

Only the landlord was represented at the hearing. Since the tenant was not in attendance, I explored service of hearing documents upon the tenant. The landlord's agent testified that the Notice of Dispute Resolution Proceeding and Interim Decision were sent to the tenant via registered mail and successfully delivered to the tenant on March 26, 2020. The landlord provided the registered mail receipt, including tracking number, as proof of service and I have recorded the tracking number on the cover page of this decision. I was satisfied the tenant was duly notified of this hearing and I continued to hear from the landlord without the tenant present.

Preliminary and Procedural Matters

The landlord's agent requested the monetary claim be amended to include loss of rent that has been incurred while awaiting this proceeding as the tenant continues to occupy the rental unit and has not paid any rent or monies for his continued use and occupancy. In these circumstances, I find the request to increase the claim to reasonably foreseeable and I permitted the amendment.

The landlord also requested authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I found that request non-prejudicial since it would reduce any Monetary Order I issue, and I amended the application accordingly.

I noted that the Adjudicator considering the landlord's Application for Dispute Resolution by Direct Request found an inconsistency in the rental unit number and this inconsistency was explored by me during the hearing. The tenancy agreement includes two additional digits in identifying the rental unit number that do not appear on the 10 Day Notice or the rental unit address the landlord indicated in filing this Application for Dispute Resolution. The landlord explained there are five buildings on the property and the two additional digits in the tenancy agreement represent the building on the property, but that those two additional digits do not appear on the door of the rental unit and each building has a different street address. I was satisfied that the landlord correctly identified the rental unit in filing the Application for Dispute Resolution and in completing the 10 Day Notice, without the two additional digits.

It should be noted that on March 30, 2020 an Order was issued by the Minister of Public Safety and Solicitor General under the *Emergency Program Act* suspending a landlord's right to issue a Notice to End Tenancy due to the state of emergency as a result of the Covid-19 pandemic ("Minister's Order"). However, the Notice to End Tenancy before me pre-dates the Minister's Order and, as provided in the Minister's Order, the Notice to End Tenancy remains in effect and the landlord may be provided an Order of Possession based upon the Notice to End tenancy under section 55 of the Act.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid and loss of rent as requested?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy started on September 1, 2019 and the landlord collected a security deposit of $368.75. The tenant is required to pay rent of $1475.00 plus parking fees of $35.00 for a total monthly obligation of $1510.00 due on the first day of every month.

The tenant failed to pay rent for March 2020 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates the tenant failed to pay $1510.00 as of March 1, 2020 and a stated effective date of March 15, 2020. The landlord submitted that the tenant did not pay any of outstanding rent or file to dispute the 10 Day Notice. The landlord's agent testified the tenant continues to occupy the rental unit and the parking spot and the

tenant has not paid any monies towards use and occupancy for April 2020 or May 2020 either.

The landlord seeks an Order of Possession effective as soon as possible and a Monetary Order to recover unpaid and/or loss of rent and parking for the months of March 2020, April 2020 and May 2020.

Documentary evidence provided by the landlord included a copy of the tenancy agreement, the 10 Day Notice, a signed Proof of Service for the 10 Day Notice, and registered mail receipt.

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.

I accept the unopposed evidence before me that the tenant failed to pay the rent that was due on March 1, 2020. I was not provided any evidence to suggest the tenant had a legal right to withhold rent from the landlord. I also accept that the landlord served the tenant with a 10 Day Notice by posting to the rental unit door on March 2, 2020 and the tenant is deemed to have received it three days later, on March 5, 2020, pursuant to section 90 of the Act. Accordingly, I find the tenant had until March 10, 2020 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended on March 15, 2020. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenant the unpaid rent and parking that was due on March 1, 2020. I further

find the landlord entitled to recover loss of rent and parking incurred for the months of April 2020 and May 2020 since the tenant continues to occupy the rental unit and the parking space.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the $100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent and parking – March 2020	$1510.00
Loss of rent and parking – April 2020	1510.00
Loss of rent and parking – May 2020	1510.00
Filing fee	100.00
Less: security deposit	(368.75)
Monetary Order	$4261.25

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of $4261.25 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: May 05, 2020

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Residential Tenancy Branch