



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL - S, FF

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. A Monetary Order for unpaid rent - Section 67;
2. An Order of Possession - Section 55;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant clarified that its first and second names in the Landlord’s application are transposed. The Landlord declines any amendment to its application.

The Tenant states that it did not receive any copy of the Landlord’s application, notice of hearing and evidence and that the first the Tenant heard of the matter was when the Landlord called the Tenant 5 minutes before this hearing. The Landlord states that its application and notice of hearing was sent to each Tenant by registered mail on July 9, 2020. The Landlord states that both registered mail packages were returned uncollected. The Landlord provides the tracking numbers for that mail and these details are set out on the cover page of this Decision. Given the Landlord’s evidence of registered mail I find on a balance of probabilities that the Landlord served the Tenant

with its application. It is up to the Tenant to ensure that such registered mail is collected.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession and unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord states that the tenancy under written agreement started on April 9, 2019 with rent of \$2,400.00 payable on the first day of each month. The Landlord states that they are currently holding a security deposit of \$1,200.00. The Landlord states that the Tenant failed to pay the following rents:

- \$500.00 for January 2020
- \$2,400.00 for February 2020; and
- \$2,400.00 for March 2020.

The Landlord states that on June 25, 2020 the Landlord served the Tenant with a 10-day notice for unpaid rent dated June 25, 2020 (the "Notice") by putting the Notice in a mail slot or open newspaper holder beside the door.

The Tenant states that the tenancy started in 2017 under a written agreement and that the second named tenant named in the Landlord's application moved out of the unit over 2 years ago. The Tenant states that when the current owner took over about a year ago it never provided the Tenant with a new tenancy agreement, never gave receipts for the rents paid and would not accept the rents for January to March 2020 inclusive. The Tenant states that the Landlord's agent, appearing at this hearing, did not want to talk to the Tenant after making threats to the Tenant but that it still had the Tenant's contact information.

The Tenant states that it never received the Notice from the Landlord and that it does not have a mail slot. The Tenant states that the rents for January to March 2020 inclusive have already been dealt with in a previous Decision dated May 4, 2020. The Tenant states that the previous 10-day notice was disputed by the Tenant as the Tenant had tried to pay the rent for that period, but it was refused by the Landlord who only wanted the Tenant to move out of the unit.

The Landlord confirms that the Notice is based on the same rents as set out in the previous 10-day notice. The Landlord also states that “you can pay me now and I will take the rent”. The Landlord states that it took over as agent for the Landlord in January 2020.

The previous Decision cancels the previous 10-day notice for unpaid rent setting out the following under analysis:

Section 26 of the Act requires that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” I find the tenant had provided undisputed, sworn testimony that he had attempted to pay his rent, which was refused by the landlord. I find that the landlord has failed to provide sufficient evidence to support that the tenant has failed to comply with section 26 of the Act.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. This principle will operate where the same question has been decided in earlier proceedings; the earlier judicial decision was final; and the parties to that decision are the same in both the

proceedings. Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties. Given the undisputed evidence that the rents used for the Notice are the same rents set out in a previous 10-day notice, as the previous Decision found that the previous 10-day notice was invalid, as the Parties are the same as for the previous Decision, and as the previous Decision is final and binding I find that res judicata applies and that the matter of unpaid rents as set out in the Notice has been dealt with. Even if res judicata does not apply, given the Landlord's statement that it would now accept rents for period January to March 2020 I find that the Tenant's evidence that the Landlord refused to accept the rents for that period is consistent, reliable and credible. This evidence supports that the Landlord refused to accept rents for the period January to March 2020 inclusive and that the Tenant did attempt to pay the rents for this period. It is at a landlord's peril if a landlord refuses rents given to it. For these reasons I find that even if the Landlord did serve the Tenant with the Notice, the Notice is not valid and is cancelled. As the Notice is cancelled, I dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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: August 12, 2020

Residential Tenancy Branch