



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNRL -S, MNDCL, FFL

Introduction

This hearing was set for 1:30 p.m. on October 22, 2020, via teleconference call, to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”). The landlords applied for an Order of Possession and Monetary Order for unpaid rent.

One of the landlords appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open at least 20 minutes to give the tenant the opportunity to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notices of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only persons who had called into this teleconference.

The landlord confirmed he was notified the tenant had filed to dispute the 10 Day Notice. Since there was no appearance on part of the tenant, I dismissed her Application for Dispute Resolution without leave to reapply.

The landlords provided a registered mail receipt, including tracking number, to prove the landlord’s proceeding package was sent to the tenant at the rental unit address, via registered mail, on September 25, 2020. The landlord confirmed the tenant continues to occupy the rental unit. I was satisfied the tenant was duly served with the landlord’s proceeding package and I continued to hear from the landlord without the tenant present.

The style of cause was amended to correctly identify the landlord by his legal name and remove a common name he uses.

The landlord requested the monetary claim be amended to include loss of rent for October 2020 since the tenant has not yet returned possession of the rental unit to the landlords and the tenant has not paid any monies toward use and occupancy for the month of October 2020. The landlord also requested the application be amended to include a request to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

Rule 4.2 of the Rules of Procedure provides for amending an application at the hearing. Rule 4.2 provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In the circumstances before me, I find the landlord's request to add loss of rent for October 2020 and retention of the security deposit to be reasonably anticipated and I amended the application accordingly pursuant to Rule 4.2 of the Rules of Procedure.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent as requested?
3. Are the landlords authorized to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The parties entered into a tenancy agreement that started on January 15, 2019. The tenancy was for a fixed term of one year that expired on January 31, 2020 and then continued on a month to month basis. The tenant paid a security deposit of \$1000.00 and was required to pay rent of \$2000.00 on the first day of every month.

The tenant did not pay all of the rent that was due for the months of March 2020 through August 2020 and the landlord prepared a repayment plan on August 20, 2020 indicating the tenant was required to repay arrears at the rate of \$920.00 starting October 1, 2020.

The tenant did not pay any rent for September 2020 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") in person on September 8, 2020. The 10 Day Notice has an effective date of September 18, 2020 and indicates the tenant owed \$11200.00 in rent as of September 1, 2020.

The landlord submitted amount of \$11200.00 was calculated as follows:

- The tenant failed to pay the monthly rent of \$2000.00 for the months of March 2020 through September 2020 (a total of \$14000.00) with the exception of the following partial payments received from the tenant or from the BC government on behalf of the tenant (totalling \$2800.00):
 - \$300.00 received from the tenant on April 30, 2020
 - \$600.00 received from the government on May 6, 2020
 - \$300.00 received from the tenant on May 19, 2020
 - \$300.00 received from the government on June 2, 2020
 - \$300.00 received from the tenant on June 11, 2020
 - \$300.00 received from the government on July 6, 2020
 - \$400.00 received from the tenant on July 8, 2020
 - \$300.00 received from the government on July 30, 2020

The landlord submitted that after serving the tenant with the 10 Day Notice she did not pay anything toward the rent owing. Nor, did the tenant pay any monies for the month of October 2020 yet she continues to hold possession of the rental unit.

The landlord requested an Order of Possession effective as soon as possible and a Monetary Order for the unpaid rent of \$11200.00 plus loss of rent of \$2000.00 for the month of October 2020.

Documentary evidence provided by the landlord included a copy of: the tenancy agreement; the repayment plan of August 20, 2020; the 10 Day Notice; a signed proof of service for the 10 Day Notice; a worksheet showing the amount of rent owed; and, the Canada Post 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.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$2000.00 on the first day of every month in accordance with her terms of tenancy.

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, except issuance of notices to end tenancy were suspended for a period of time due to the COVID-19 pandemic and ensuing Ministerial Orders. The suspension on issuing notices to end tenancy was lifted starting June 24, 2020 with respect to unpaid rent that is not "affected rent". "Affected rent" is rent payable during the period of March 18, 2020 through to August 17, 2020 and is subject to a repayment plan.

I accept the unopposed evidence before me that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on September 8, 2020.

In this case, the tenant failed to pay rent on March 1, 2020 and that is outside of the "affected rent" period. Also, the tenant failed to pay rent that was due September 1, 2020 which is also outside of the "affected rent" period.

The landlord had included the unpaid rent of March 1, 2020 in the repayment plan which is a benefit to the tenant since the repayment plan gives the tenant 10 months to repay the rental arrears that accumulated; however, the tenant did not have any basis for withholding rent that was payable September 1, 2020. Accordingly, I find the landlord was in a position to issue a 10 Day Notice to End Tenancy for Unpaid Rent when the subject 10 Day Notice was served upon the tenant on September 8, 2020.

The tenant disputed the 10 Day notice, and in her brief submission, she indicates the 10 Day Notice should be cancelled because "we are just coming out of a devastating pandemic which cost me to lose job offers..." The tenant does not provide a legal basis for withholding rent for September 2020 and an inability to pay is not a legal basis for failing to pay rent for September 2020. Since the tenant did not pay the September 2020 rent, I find the tenancy came to an end on September 18, 2020 due to unpaid rent.

In light of the above, I find the landlords entitled to an Order of Possession. Provided to the landlords with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I have reviewed the landlord's calculations and I am satisfied the amount of unpaid rent claimed is accurate. As the tenancy has ended, the landlords are entitled to a Monetary Order for the unpaid rent, including "affected rent", of \$11200.00. I further find the

tenant's failure to vacate the rental unit by September 18, 2020 or pay for use and occupancy of the rental unit for October 2020 has caused the landlords to suffer further loss of rent of \$2000.00 for the month of October 2020. As such, I award the landlords loss of rent of \$2000.00 for the month of October 2020.

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

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

Unpaid rent for March 2020 through September 2020	\$11200.00
Loss of rent for October 2020	2000.00
Filing fee	100.00
Less: security deposit	<u>(1000.00)</u>
Monetary Order	\$12300.00

Conclusion

The tenant's Application for Dispute Resolution is dismissed without leave.

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order for the balance owing of \$12300.00 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: October 23, 2020

Residential Tenancy Branch