



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 333 EAST 11th Holdings LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, FFL

Introduction

This hearing was set to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

Only the landlord's agent appeared for the hearing. There was no appearance on part of the tenant despite leaving the teleconference call open for at least 15 minutes to allow the tenant to appear.

The landlord stated the tenant vacated the rental unit and the landlord regained possession of the rental unit on October 23, 2020. As such, I find the tenant's application I dismissed the tenant's Application for Dispute Resolution without leave.

Since the landlord has already gained possession of the rental unit the landlord no longer requires an Order of Possession and I do not provide one with this decision. The landlord's agent confirmed it seeks to pursue the tenant for its monetary claim.

I proceeded to explore service of the landlord's monetary claim against the tenant.

The landlord's agent testified that the landlord's Application for Dispute Resolution and other supporting documents were served upon the tenant, in person on October 23, 2020 when he was still at the residential property. The landlord submitted a document showing the tenant signed a receipt for the hearing package. I was satisfied the tenant was served with the landlord's claim and I continued to hear from the landlord without the tenant present.

Preliminary Issue -- Amendment of landlord's monetary claim

The landlord's claim, as filed included unpaid rent and parking fees up to and including the month of October 2020. The landlord's agent stated the landlord seeks to increase its monetary claim to include loss of rent payable on November 5, 2020 and the landlord attempted to amend the claim by sending an updated ledger to the tenant via registered mail on November 6, 2020. The landlord provided a registered mail tracking number and a search of the tracking number showed the tenant had not yet picked up the registered mail.

An Application for Dispute Resolution must be amended in accordance with the Rules of Procedure. The Rules require that an Amendment to an Application for Dispute Resolution be received by the respondent at least 14 days before the hearing date. In this case, the landlord did not prepare an Amendment and send it to the tenant so that he would receive it at least 14 days before the hearing.

Under the Rules of Procedure, I have discretion to amend a claim during the hearing if the amendment would be reasonably foreseeable by the respondent and non-prejudicial to do so. The landlord is seeking to amend the claim to include loss of rent for a month after the tenant vacated the rental unit and an amendment to include such a claim is not foreseeable. Rather, I find it more appropriate to put the tenant on advance notice that such a claim would be decided upon. Therefore, I declined to amend the monetary claim to include loss of rent for November 2020 at the hearing and the landlord is at liberty to file another Application for Dispute Resolution to seek loss of rent for November 2020.

The landlord requested the landlord's application be amended to request authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent as the landlord had erroneously added the amount of the security deposit to the monetary claim instead of deducting it. I permitted this amendment as it was non-prejudicial to the tenant to do so since it would reduce any Monetary Order I provide to the landlord.

Issue(s) to be Decided

1. Is the landlord entitled to recovery unpaid rent and parking fees from the tenant, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenant and the landlord's former property manager entered into a tenancy agreement that commenced on September 25, 2019 on a month to month basis. The tenant paid a security deposit of \$880.00 and was required to pay rent of \$1760.00 and parking fees of \$225.00 under a separate parking agreement on the fifth (5th) day of every month. The current landlord's agent took over management of the property in March 2020.

For the months of April 2020 through August 2020 the tenant made partial payments toward rent in the amounts of \$1000.00; \$1210.00; 1225.00; 1225.00 and \$1000.00 respectively. In August 2020 the landlord issued a repayment plan to the tenant for the rental arrears indicating the tenant had to pay \$710.00 per month toward the arrears starting October 1, 2020. For the month of September 2020 the tenant did not pay anything toward the monthly rent and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid on September 21, 2020 with a stated effective date of October 7, 2020 which the tenant disputed on the basis he was unable to pay the rent due to loss of income. The tenant did not pay any rent after receiving the 10 Day Notice. Nor, did the tenant pay any rent for October 2020 and on October 16, 2020 the tenant gave a notice to end tenancy effective November 30, 2020; however, the tenant vacated the rental unit and returned possession of the rental unit to the landlord on October 23, 2020.

The landlord submitted that the tenant gave notice to end the parking agreement September 1, 2020 to be effective September 30, 2020 and the landlord is not seeking parking fees for the month of October 2020.

The landlord submitted a copy of the tenancy agreement, including the parking agreement; documentation to demonstrate the change in property management; the repayment plan; a ledger showing the amount of outstanding rent and parking for the period of April 2020 through October 2020 totalling \$8010.00; and, the 10 Day Notice to End Tenancy for Unpaid Rent.

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.

Due to the Covid-19 pandemic, landlords were precluded from ending a tenancy for unpaid rent that accrued during the period of March 18, 2020 through August 17, 2020 although the tenant remains liable for the outstanding rent. Starting in August 2020 landlords may issue a rent repayment plan to a tenant and require payments toward the arrears starting on October 1, 2020. Further, rents payable after August 17, 2020 had to be paid when due under the tenancy agreement and failure to do so entitled landlords to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

In this case, the landlord gave the tenant a repayment plan for the rental arrears but the tenant did not pay any rent that was due on September 5, 2020 or October 5, 2020 or any part of the repayment plan. The tenant's failure to pay rent for September 2020 put the landlord in a position to issue a 10 Day Notice to End Tenancy for Unpaid Rent, which the landlord did. The tenant disputed the 10 Day Notice and a hearing was set for November 20, 2020; however, the tenant brought the tenancy to an end on October 23, 2020 by vacating the rental unit. Since the tenancy has come to an end the landlord is entitled to a Monetary Order for all of the unpaid rent and parking fees.

Based on the unopposed evidence before me, I accept that the tenant failed to pay the rent and parking fees that were due for the months of April 2020 through October 2020 in the amounts put forth by the landlord and I find the landlord is entitled to recover the unpaid rent and parking fees from the tenant. Therefore, I grant the landlord's request for an award of \$8,010.00 for unpaid rent and parking fees.

I further award the landlord recovery of the \$100.00 filing fee paid for its application.

I authorize the landlord to retain the tenant's \$880.00 security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above, I provide the landlord with a Monetary Order in the net amount of \$7230.00 [calculated as: \$8010.00 + \$100.00 - \$880.00] to serve and enforce upon the tenant.

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$7230.00 to serve and enforce upon the tenant.

The landlord is at liberty to file another Application for Dispute Resolution to seek unpaid rent for November 2020 or any other damages or loss not claimed under this Application for Dispute Resolution.

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: November 24, 2020

Residential Tenancy Branch