



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 13, 2020 (the "Application"). The Landlord sought the following:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- To recover unpaid rent; and
- Reimbursement for the filing fee.

The Landlord appeared at the hearing with the Co-landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties agreed an Order of Possession had been issued on another file and the Tenant had vacated the rental unit October 02, 2020. The Landlord confirmed she was no longer seeking an Order of Possession in this matter.

The Application shows the Landlord is seeking \$1,475.00 in unpaid rent for September. At the hearing, the Landlord advised she is seeking unpaid rent for May to October of 2020. The Landlord submitted that this is reflected in the Direct Request Worksheet and Repayment Plan in evidence. The Landlord sought to amend the Application to include unpaid rent from May to October of 2020.

The Tenant said she was not aware we would be dealing with unpaid rent from May to October of 2020 at this hearing. The Tenant submitted that the Application should not be amended.

Rule 4.2 of the Rules of Procedure (the “Rules”) states:

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.

I am satisfied it is appropriate to amend the Application to include unpaid rent from May to October of 2020. The Application is clear that the Landlord is seeking to recover unpaid rent. I do not find it unreasonable to expect the Tenant to have anticipated that the Landlord would seek all unpaid rent given this tenancy has ended. The Landlord submitted the Direct Request Worksheet showing September rent owing as well as the Repayment Plan which covers unpaid rent from May to August of 2020. During the hearing, the Tenant agreed with the Landlord on the main issues before me. The Tenant did not have trouble answering questions and did not refer to evidence she had but had not submitted. In the circumstances, I am satisfied the Tenant was able to fully put her position about unpaid rent before me and do not find that there is any prejudice to the Tenant in dealing with all of the outstanding rent.

The Landlord had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord’s evidence. The Tenant confirmed receipt of the hearing package September 22, 2020 and confirmed receipt of the Landlord’s evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

I note that near the outset of the hearing, the Tenant said the Co-landlord has a no-contact order in relation to the Tenant. I asked the Co-landlord if this is accurate and the Co-landlord said he is not aware of a no-contact order. I told the parties that parties are expected to comply with orders they are bound by, that I am not aware of whether there is a no-contact order and that we would not be addressing this issue further.

I also note that the Tenant and Co-landlord continued to exchange words after they were told to stop. I gave the parties a strict warning about how the hearing was going to proceed and what was expected of them. The parties confirmed they did not have questions about the warning.

During the hearing, when I was asking the Tenant questions, the Tenant became argumentative and started making inappropriate comments about the Landlord and Co-landlord. The Tenant would not stop when asked to stop and would not answer my questions in an appropriate manner. Given this, I put the Tenant on mute and obtained further testimony from the Landlord. After a period of time, I unmuted the Tenant and continued to hear from the Tenant on the issues before me.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It states that the tenancy started December 01, 2018; however, the parties agreed it started December 01, 2019. This was a month-to-month tenancy. Rent was \$1,475.00 per month due on the first day of each month. The Tenant paid a \$737.50 security deposit and \$737.50 pet damage deposit. The agreement was signed by the Landlord and Tenant. Both parties agreed the written tenancy agreement is accurate other than as stated above.

The Landlord sought to keep the security and pet damage deposits towards unpaid rent.

Both parties agreed the Tenant is entitled to September rent free pursuant to a Two Month Notice issued pursuant to section 49 of the *Residential Tenancy Act* (the "Act").

The Landlord sought \$1,175.00 in unpaid rent for each month from May to August of 2020. The Landlord testified that the Tenant did not pay these amounts and did not have authority under the *Act* to withhold rent.

The Tenant agreed \$1,175.00 in rent for each month from May to August of 2020 is outstanding. The Tenant agreed she did not have authority under the *Act* to withhold rent. The Tenant agreed to the Landlord keeping the security and pet damage deposits towards unpaid rent.

The Landlord sought rent for the two days in October the Tenant remained in the rental unit.

The Tenant referred to a prior RTB decision allowing her two days to vacate. The Tenant testified that the Landlord never served her with the Order of Possession issued on the previous RTB file as required.

Analysis

Section 7(1) of the *Act* states that a party who does not comply with the *Act* or their tenancy agreement must compensate the other party for loss that results.

Section 26 of the *Act* states:

26 (1) 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.

Section 57(3) of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

There is no issue that rent was \$1,475.00 per month due on the first day of each month during the tenancy as the parties agreed on this.

There is no issue that the Tenant did not pay \$1,175.00 of rent each month from May to August of 2020 as the parties agreed on this.

There is no issue that the Tenant did not have authority under the *Act* to withhold rent for May to August of 2020 as the parties agreed on this.

Therefore, pursuant to sections 7 and 26 of the *Act*, the Tenant owes the Landlord \$1,175.00 in rent for each month from May to August of 2020 for a total of \$4,700.00. The Landlord is entitled to recover this amount.

I acknowledge that the above includes “affected rent” as that term is defined in the *Covid-19 (Residential Tenancy Act And Manufactured Home Park Tenancy Act) (No. 3)*

Regulation. I acknowledge that “affected rent” is subject to a repayment plan if a landlord seeks to end a tenancy for unpaid “affected rent”. However, here, the tenancy has ended and therefore the Landlord is entitled to recover all outstanding rent.

The parties agreed the Tenant is entitled to September rent free and therefore the Landlord is not entitled to recover September rent.

In relation to the two days in October the Tenant occupied the rental unit, I am satisfied the Landlord is entitled to recover rent for these two days. Pursuant to sections 26 and 57 of the *Act*, a tenant is required to pay rent for the entire period they remain in the rental unit. Here, the Tenant remained in the rental unit for two days of October and therefore is required to pay rent for these two days. The prior RTB decision does not affect this. First, the prior RTB decision (File Number 1) did not give the Tenant two days to vacate the rental unit. The Decision and Order of Possession show the Tenant was required to vacate by 1:00 p.m. on September 30, 2020. More importantly, whether the Decision or Order of Possession allowed the Tenant two days to vacate or not is irrelevant. The Decision and Order of Possession did not give the Tenant two days rent-free in the rental unit. A decision or order of possession allowing a tenant to stay in a rental unit until a specific date or for two days after being served with the order of possession does not mean the tenant does not have to pay rent for the days they remain in the rental unit. The two issues are separate issues.

I find pursuant to sections 26 and 57 of the *Act* that the Landlord is entitled to recover two days of rent for October which I calculate to be \$95.16 ($\$1,475.00/31 = \$47.58 \times 2 = \95.16).

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$4,895.16. The Landlord can keep the security and pet damage deposits towards this amount pursuant to the Tenant’s agreement that the Landlord can do so. Therefore, \$1,475.00 is deducted from the total amount owing. The Landlord is issued a Monetary Order for the remaining \$3,420.16.

Conclusion

The Landlord is entitled to \$4,895.16. The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$3,420.16. This Order must be served on the Tenant. If the Tenant fails to comply with

this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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: November 12, 2020

Residential Tenancy Branch