



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westend Rental Solutions Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's Application: CNC, AS, OLC, FFT

Landlord's Application: MNRL-S, FFL, OPC

Landlord's Application: OPRM-DR, OPR-DR-PP, FFL

Introduction

This hearing set to deal with two Applications for Dispute Resolution: one filed by the tenant and the other filed by the landlord. The tenant filed to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice"); for authorization to assign or sublet; and, for orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for cause and a Monetary Order for unpaid rent for the month of April 2020; and, authorization to retain the tenant's security deposit.

I confirmed the tenant served her Application for Dispute Resolution to the landlord by registered mail sent on October 9, 2020; however, there was no evidence or supporting documents provided with the tenant's Application for Dispute Resolution. The landlord received this package.

I confirmed the landlord served the tenant with its Application for Dispute Resolution and supporting documents and evidence by registered mail sent on October 31, 2020 and the tenant received this package. The landlord then submitted an Amendment to the Residential Tenancy Branch to request the monetary claim be increased to include unpaid and/or loss of rent for November 2020; however, the landlord's agent acknowledged that the Amendment was not served upon the tenant.

The landlord subsequently filed an Application for Dispute Resolution under the Direct Request procedure with respect to obtaining an Order of Possession and Monetary Order for unpaid rent for November 2020. The landlord obtained a Substituted Service

Order authorizing the landlord to serve the tenant by email. The tenant received this hearing package.

The tenant prepared a written response, referencing both of the Applications for Dispute Resolution filed by the landlord and served the response upon the landlord by leaving it in the mailbox at the landlord's service address and emailing it to the landlord. I confirmed the landlord's agent was in receipt of the tenant's written response.

In the tenant's written submission, she appears to object to amending the landlord's claim to include unpaid rent for November 2020 since it is the subject of the landlord's subsequent Application for Dispute Resolution by Direct Request. I informed the parties that I have the authority and discretion to join files together. Both parties indicated they were prepared to deal with the landlord's claim for unpaid rent for November 2020 and consented to joining the landlord's Application for Dispute Resolution by Direct Request to this proceeding. Accordingly, I ordered the files joined.

I also heard from both parties that the tenant has since vacated the rental unit and the issues identified by the tenant on her Application for Dispute Resolution were moot. The tenant withdrew the remedies she applied for with the exception of the filing fee. Since the tenant had not submitted or served any evidence in support of her Application for Dispute Resolution, and was seeking to cancel a 1 Month Notice served a month prior and without providing a copy of it, I found the tenant unlikely to have succeeded in her Application for Dispute Resolution and I summarily dismissed the tenant's request for recovery of the filing fee.

Having heard the tenant has vacated the rental unit and confirming the landlord has regained possession of the rental unit, I found the landlord's request for an Order of Possession to be moot and I did not further consider granting one with this decision.

In light of the above, I determined the only issues to determine under these Applications was the landlord's entitlement to recovery of unpaid and/or loss of rent for the months of April 2020 and November 2020; and, the landlord's entitlement to retain the tenant's security deposit.

I have amended the style of cause to correctly name the parties, as reflected on the tenancy agreement.

Issue(s) to be Decided

1. Is the landlord entitled to recovery of unpaid and/or loss of rent for April 2020 and November 2020?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee(s) for the landlord.

Background and Evidence

The parties executed a written tenancy agreement for a tenancy to commence on February 7, 2020. The tenant paid a security deposit of \$2725.00 and was required to pay rent of \$5450.00 per month.

The tenancy agreement indicates the rent was to be paid on the "31" day of every month; however, this proved to be problematic where there were not 31 days in a month.

The tenancy agreement indicates the tenancy was to be for a fixed term set to expire on "February 28, 2020"; however, both parties were in agreement that the fixed term expiry date should have read February 28, 2021.

The tenancy agreement indicates that at the end of the fixed term the tenancy was to end and the tenant would have to vacate the rental unit; however, the reason for requiring the tenant to vacate at the end of the fixed term was not specified. The landlord stated the vacate clause was indicated so that the landlord could "renegotiate" the tenancy agreement at the end of the fixed term. I cautioned the landlord that such a term violates the Act since the Act was amended in 2017 and I suggested the landlord's agents update their knowledge and use of forms with respect to fixed term tenancies.

Unpaid rent – April 2020

The parties provided consistent testimony that the tenant did not pay rent for April 2020 with the exception of \$545.00 that was paid toward the rental arrears in August 2020.

The tenant questioned the landlord's entitlement to recovery of the outstanding balance for April 2020 and pointed to previous hearing held in July 2020 where the landlord's request for a Monetary Order was denied (file number referenced on the cover page of this decision). Upon review of the landlord's previous Application for Dispute Resolution

I determined that in April 2020 the landlord applied for a Monetary Order for the unpaid rent for April 2020 and a hearing was held on July 7, 2020. The Arbitrator presiding over the matter referenced the COVID-19 pandemic and suggested the landlord explore a repayment plan with the tenant. The Arbitrator dismissed the landlord's application, with leave to reapply.

The tenant submitted that the landlord has not given the tenant a valid repayment plan for the unpaid April 2020 rent.

End of tenancy and November 2020 rent

On September 2, 2020 the landlord served the tenant with a One Month Notice to End Tenancy for Cause ("1 Month Notice") by posting it on the rental unit door. The 1 Month Notice has an effective date of October 31, 2020. The tenant filed to dispute the 1 Month Notice although she filed late, on October 3, 2020 and the hearing set to deal with the 1 Month Notice was set for December 11, 2020; however, the tenant vacated the rental unit in November 2020.

The tenant paid rent for October 2020 but did not pay any rent for November 2020 and on November 1, 2020 the landlord's agent served a 10 Day Notice to end Tenancy for Unpaid Rent indicating the tenant failed to pay \$5995.00 in rent due on October 31, 2020 (rent of \$5450.00 + rent repayment of \$545.00) The landlord testified that the 10 Day Notice was served by posting on the rental unit door. The tenant testified that it was delivered to her roommate, in person, at the rental unit.

The tenant testified that she secured new living accommodation starting November 5, 2020 and she finished removing their possessions from the property on November 10, 2020.

On November 14 or 15, 2020 the landlord's agent attended the rental unit and found that it was largely vacated, with the exception of a clothes dryer. The tenant sent the landlord an email on November 17, 2020 stating she had vacated on November 10, 2020. The tenant's email of November 17, 2020 stated, in part:

"Please be advised that my housemates and I vacated the property at [address omitted for privacy reasons] on November 10, 2020 in accordance with the Notice to End Tenancy delivered on November 1, 2020."

The tenant has not yet returned the keys to the landlord. The tenant also acknowledged leaving the clothes dryer behind because she was unable to move it but that she will make her best efforts to retrieve it December 13, 2020 when the parties meet to do an inspection. The tenant stated that she will also return the keys to the landlord on December 13, 2020 but that she understood the landlord had already changed the locks.

The landlord is seeking to recover unpaid and/or loss of rent for November 2020 as the landlord did not have prior notice that the tenant would be vacating the rental unit and the tenant had received multiple notices to end tenancy and did not move out. Upon finding the rental unit vacated on November 14 or 15, 2020 the landlord's agent testified that she posted the unit for rent online and has taken video for virtual tours; however, the unit did not re-rent in November 2020.

The tenant argued the tenancy came to an end pursuant to the 1 Month Notice, on October 31, 2020, and the tenant obligation to compensate the landlord for unpaid and/or loss of rent for November 2020 ought to be limited to over-holding 10 days, at most.

The tenant also pointed out that the landlord was frequently showing the unit to prospective tenants in September 2020 and October 2020 so the landlord ought to have been able to find new tenants starting mid-November 2020.

The landlord acknowledged she had been showing the unit in September 2020 and October 2020 in preparation for the tenancy to end on October 31, 2020 but that the last date she did a showing, before finding the unit vacated in November 2020, was on October 6, 2020.

The tenant submitted that she had suffered loss of quiet enjoyment due to the landlord's actions in her written submissions and had testified that the landlord was repeatedly serving her with eviction notices during the pandemic. The landlord acknowledged that she served the tenant with an eviction notice almost every month.

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. A tenant's obligation to pay rent remains so long as the tenancy remains in effect.

Unpaid rent for April 2020

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").

The tenant did not pay rent that was due for April 2020 and the landlord had made a previous Application for Dispute Resolution, in April 2020, to obtain a Monetary Order for unpaid rent for April 2020 and that application was dismissed with leave to reapply, meaning the landlord is at liberty to make the claim again, which it has done by way of the Application before me.

I am provided undisputed evidence in August 2020 the tenant paid \$545.00 toward the monthly rent of \$5450.00 payable for the month of April 2020, leaving an outstanding balance of \$4905.00.

The tenant referred to the requirement for landlords to give tenants a repayment plan as a basis for denying the landlord's request for a Monetary Order for the outstanding rent for April 2020. Starting August 18, 2020 repayment plans were required of landlords to give the tenant the opportunity to pay rental arrears that accrued during the "specified period" of March 18, 2020 and August 17, 2020 over a period of time to avoid having the tenancy ended for unpaid rent or for repeated late payment of rent. However, where a tenancy has ended, the landlord may apply for and obtain a Monetary Order for any unpaid rent including rent during from "specified period". Since the tenancy has ended, I provide the landlord with a Monetary Order for the remaining unpaid balance of rent for April 2020 in the amount of \$4905.00.

End of tenancy and November 2020 rent

The tenant argued that the tenancy came to an end on October 31, 2020 by virtue of the 1 Month Notice; however, I find the tenant's actions are inconsistent with that argument and the tenant acted in ways that would result in the landlord not being able to secure a replacement tenant for November 1, 2020, as set out below.

The tenant filed to dispute the 1 Month Notice on October 3, 2020 and a hearing was set for today, December 11, 2020. As such, I find it reasonable that the last time the landlord did a showing to prospective tenants was on October 6, 2020 since the

landlord's ability to regain possession of the rental unit would have been suspended until the hearing set for December 11, 2020.

The tenant did not vacate the rental unit by October 31, 2020 and according to her own admission she and/or her roommate(s) were still occupying the rent unit when the landlord's agent attended the property on November 1, 2020 to serve a 10 Day Notice; and, the tenant acknowledged that her possessions, and/or those of her roommates, were still at the property until November 10, 2020. Since the tenant was still residing and holding possession of the rental unit in early November 2020, and there was no advance communication from the tenant that she was going to vacate by November 10, 2020, I find it unreasonable that the tenant expected the landlord have a prospective tenant lined up for mid-November 2020.

Rather, the tenant did not communicate to the landlord that she had vacated the rental unit until November 17, 2020 and in that communication the tenant expressly states she vacated by November 10, 2020 pursuant to the Notice to End Tenancy of November 1, 2020 which was the 10 Day Notice, not the 1 Month Notice.

The landlord acknowledged she entered the unit on November 14 or 15, 2020 and found it to be largely vacated. As such, I find the landlord was not in a position to resume its search for replacement tenants until that time.

As for the tenant's submission regarding loss of quiet enjoyment, a tenant's loss of quiet enjoyment may be viewed as a breach of a material term of a tenancy; however, in order to bring a tenancy to an end early due to breach of a material term under section 45(3) of the Act, the tenant must give the landlord a written notice to the landlord to correct the breach before ending the tenancy. The tenant did not submit evidence that she gave the landlord a written notice to correct a material breach of loss of quiet enjoyment. As such, I cannot find the tenant ended the tenancy early under section 45 of the Act.

In keeping with the above, I find the tenant's actions and communications are consistent with the tenancy ending pursuant to the 10 Day Notice and I find the tenant's suggestion that the landlord could have secured replacement tenants by mid-November 2020 to be unrealistic and unreasonable in the circumstances.

For all of the above reasons, I find the landlord entitled to recover unpaid rent for November 2020 in the amount of \$5450.00.

Filing fee, security deposit and Monetary Order

I award the landlord recovery of the filing fee paid for one of its Applications for Dispute Resolution before me as I am of the view the landlord may have merely amended its existing application to include unpaid rent for November 2020 but it chose to pursue unpaid rent for November 2020 by filing another Application for Dispute Resolution. Therefore, I award the landlord \$100.00 for the filing fee.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent, as requested by the landlord, and I provide the landlord with a Monetary Order in the net amount as calculated below.

Unpaid rent for April 2020	\$4905.00
Unpaid rent for November 2020	5450.00
Filing fee	100.00
Less: security deposit	<u>(2725.00)</u>
Monetary Order	\$7730.00

Although I had concluded the tenant did not end the tenancy early under section 45(3) of the Act; it is important to note that I make no findings as to whether the tenant suffered from loss of quiet enjoyment at the hands of the landlord and the tenant remains at liberty to file an Application for Dispute Resolution to seek monetary compensation for loss of quiet enjoyment.

Conclusion

The tenant's application was moot at the time of the hearing and it was dismissed in its entirety.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$7730.00 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: December 14, 2020

Residential Tenancy Branch