



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: LRE, LAT, OLC, FFT

Landlord's application: OPR-DR, FFL, MNRL, MNDL-S, MNDCL-S, OPC

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied for orders suspending the landlord's right to enter the rental unit; orders for the landlord to comply with the Act, regulations or tenancy agreement; and, authorization to change the locks. The landlords applied for an Order of Possession for unpaid rent and cause; a Monetary Order for unpaid and/or loss of rent, late fees, damage to the rental unit; and, authorization to retain the tenant's security deposit and pet damage deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents and materials upon each other.

The tenant acknowledged she did not serve the landlord with her proceeding package. I dismissed the tenant's application, without leave to reapply. I did not grant the tenant leave to reapply since I have determined the tenancy is over and the remedies sought by the tenant would be applicable only if the tenancy were continuing.

As for service of the landlord's hearing materials, the landlord's representative submitted that the proceeding package and evidence were served to the tenant by registered mail sent on October 23, 2020 and November 16, 2020 and Canada Post shows that both packages were successfully delivered on October 26, 2020 and November 18 or 19, 2020 respectively. The tenant confirmed that she continued to

reside at the rental unit until December 1, 2020 or December 2, 2020. As such, I was satisfied the tenant was duly served with notification of the landlord's application and I continued to hear the landlord's application.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent or cause?
2. Are the landlords entitled to a Monetary Order as claimed?
3. Are the landlords authorized to retain the tenant's security deposit and/or pet damage deposit?

Background and Evidence

I was provided a written tenancy agreement executed by the parties that provided for a one year fixed term tenancy set to commence on August 1, 2019 and then continued on a month to month basis thereafter. The tenant submitted that prior to entering into the written tenancy agreement the parties had an oral tenancy agreement that ran from April 1, 2019 through July 31, 2019.

The parties provided consistent evidence that the tenant paid a security deposit of \$1100.00 and a pet damage deposit of \$1100.00 and the tenant was required to pay rent of \$2200.00 on the first day of every month.

The parties provided consistent testimony that the tenant did not pay rent that was due on October 1, 2020. The tenant testified the landlord told her she could use her security deposit and pet damage deposit for the rent. The landlord denied that to be true.

The parties provided consistent evidence that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit on October 2, 2020 indicating the tenant failed to pay rent of \$2200.00 on October 1, 2020. The 10 Day Notice has a stated effective date of October 13, 2020.

On October 7, 2020 the landlord posted a One Month Notice to End Tenancy for Cause ("1 Month Notice") on the door of the rental unit, with a stated effective date of October 21, 2020.

After serving the 10 Day Notice the tenant did not pay the outstanding rent indicated on the 10 Day Notice. Nor, did the tenant file to dispute the 10 Day Notice and serve such an application upon the landlord. The tenant did not pay any rent for November 2020 or

December 2020. The tenant testified that she vacated the rental unit on December 1 or 2, 2020 although she has not yet returned the keys to the landlord.

The landlord's representative indicated that they were uncertain as to whether the tenant has in fact vacated the rental unit.

The landlord's representative tried to set up a time to meet the tenant at the rental unit to retrieve the keys and do an inspection. The tenant was not agreeable to meeting the landlord and stated she will return the keys to the landlord by registered mail that she will send later today.

The landlords seek to recover unpaid rent for October 2020, plus loss of rent for November 2020 and December 2020 and late fees for these three months. The landlords were agreeable to retaining the tenant's deposits in satisfaction of the unpaid rent for October 2020 and requested a Monetary Order for the balance owing.

The tenant responded that she did not pay any rent for November 2020 because she needed the money to find new living accommodation and she lost her job. The tenant questioned compensating the landlords for loss of rent for December 2020 since she vacated the rental unit early in December 2020 although she still has the keys for the unit.

The landlords had also requested monetary compensation for damage to the rental unit; however, the landlords have not viewed the rental unit since September 19, 2020. A tenant has until the end of a tenancy to rectify damage for which they are responsible and I was of the view that a damage claim made based on an inspection on September 19, 2020 is premature. Accordingly, this remedy was dismissed with leave to reapply.

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 unless the tenant has a legal right under the Act to withhold rent payable.

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. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute

Resolution and serving it upon the landlord. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$2200.00 on the first day of every month and the tenant did not pay rent for October 2020. I also accept that the tenant received a 10 Day Notice on October 2, 2020 and she did not pay the outstanding rent after receiving the 10 Day Notice. Nor, did she file to dispute the 10 Day Notice. As for the tenant's assertion the rent was paid by way of her security and pet damage deposits, section 21 of the Act provides: "Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent." The tenant did not produce evidence to show the landlord gave written consent to pay rent by way of the deposits and the landlord denied giving the tenant such consent. Accordingly, I find the tenant failed to pay October 2020 rent and the tenant is conclusively presumed to have accepted that the tenancy would end on the effective date of October 13, 2020 due to failure to pay rent and she was required to vacate the rental unit by that date.

Having found the tenancy ended pursuant to the 10 Day Notice, I find it unnecessary to further consider whether there was basis to end the tenancy for cause or the validity of the 1 Month Notice served on October 7, 2020.

During the hearing the tenant stated she has already vacated the rental unit, although she has yet to return the keys to the landlord. Where a tenant has vacated or abandoned a rental unit possession of the unit automatically reverts back to the landlord; however, the landlord has not yet confirmed the tenant has vacated the rental unit and has not received the keys from the tenant. Therefore, I provide the landlord with an Order of Possession to serve and enforce in the event the tenant has not already vacated the rental unit. The Order of Possession is effective two days after service.

Upon consideration of the evidence before me, I find the landlord entitled to recover unpaid rent for October 2020 in the amount of \$2200.00. Also considering the tenant did not vacate the rental unit by the time she was required to under the 10 Day Notice, and continued to hold possession of the rental unit until the date of this hearing without paying any monies for her continued use and occupancy of the rental unit, I find the tenant's actions have caused the landlords to suffer further loss of rent for the months of

November 2020 and December 2020 and I award the landlords recovery of those losses from the tenant in the amount of \$4400.00.

Section 7 of the Residential Tenancy Regulations permits a landlord to charge a tenant late fees so long as the amount of the fee does not exceed \$25.00 and the tenancy agreement provides for such a term. Upon review of the addendum to the tenancy agreement, I find there is a clause permitting the landlord to charge the tenant \$25.00 for a late fee and I find the landlord is entitled to charge the tenant a \$25.00 late fee under the Regulations. I limit the landlord's award for late fees to the month of October 2020 only since the tenancy agreement ended in October 2020. Therefore, I make a partial award of late fees in the sum of \$25.00.

Since the landlords were largely successful in this Application for Dispute Resolution, I award the landlords recovery of the \$100.00 filing fee.

I authorize the landlords to retain the tenant's security deposit and pet damage deposit as an offset against unpaid rent and I provide the landlords with a Monetary Order for the balance owing, as calculated below:

Unpaid rent – October 2020	\$2200.00
Late fee – October 2020	25.00
Loss of rent – November 2020 and December 2020	4400.00
Filing fee	100.00
Less: security and pet damage deposit	<u>(2200.00)</u>
Monetary Order for landlord	\$4525.00

Conclusion

The landlord is provided an Order of Possession to serve and enforce in the event the tenant has not already vacated the rental unit. The Order of Possession is effective two (2) days after service.

The landlord is authorized to retain the tenant's security and pet damage deposit and is provided a Monetary Order for the balance owing of \$4525.00.

The landlord's claim for damage was premature and is dismissed with leave to reapply.

The tenant's Application for Dispute Resolution was dismissed due to her failure to serve it upon the landlord and it is dismissed without leave to reapply as the remedies sought are moot since the tenancy has ended.

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 08, 2020

Residential Tenancy Branch