



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S, FFL, CNR

Introduction

This hearing was set to deal with cross applications. The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 3, 2020. The landlord applied for a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit.

The agent for the property owner appeared for the landlord. There was no appearance on part of the tenant.

The owner's agent testified that the tenant had not served the tenant's Application for Dispute Resolution upon the landlord and the tenant was removed from the property by the court bailiff on December 8, 2020. The owner's agent provided a file number for a previous dispute resolution hearing that took place on November 13, 2020 and conformed that an Order of Possession was granted on that date as the Arbitrator was satisfied the tenancy would end pursuant to a *Two Month Notice to End Tenancy for Landlord's Use of Property* (file numbers provided on the cover page of this decision). In these circumstances, I found the tenant's Application for Dispute Resolution to be moot in any event and I dismissed it without leave to reapply.

As for the landlord's hearing package, the owner's agent testified that he gave it to the tenant, in person, at the residential property on December 8, 2020. The package was also sent to the tenant via registered mail December 3, 2020 (tracking number provided on the cover page of this decision). I was satisfied the tenant was served with notification of the landlord's claims against him and I proceeded to hear from the landlord without the tenant present.

I noted that the landlord's name that appears on the tenant's Application for Dispute Resolution was different than the landlord's name appearing on the landlord's

Application for Dispute Resolution. The person appearing before me, confirmed that the owner of the property is named on the landlord's Application for Dispute Resolution but that the agent has authorization to manage the rentals at the property and the tenant had named him as the landlord on the tenant's Application for Dispute Resolution. I was satisfied that both the owner and the owner's agent meet the definition of "landlord" under section 1 of the Act and the style of cause reflects the name of both the owner and her agent.

The landlord's agent confirmed that the owner lived at the same residential property as the rental unit during the tenancy; however, the owner and the tenant did not share kitchen or bathroom facilities. As such, I was satisfied this living accommodation was not exempt from the Act under section 4.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent from the tenant, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The owner's agent submitted that the tenancy started on June 1, 2020. The agent signed a "shelter" document for the tenant to give to Income Assistance with respect to the rental agreement between the parties and this document was submitted into evidence. The landlord also provided a hand-written document created by the tenant that appears to confirm some of the terms of tenancy. The landlord also provided a number of text messages between the landlord and the tenant with a view to establishing the tenant's obligation to pay rent of \$675.00 per month and payment of a security deposit of \$337.50.

The owner's agent submitted that the monthly rent was set at \$675.00 payable on the last day of the month but the landlord accepted rent on the first day of the month as well. The landlord collected a security deposit of \$337.50.

The landlord submitted that the tenant did not pay rent for October 2020 or November 2020. The landlord seeks recovery of the rent for both of these months, in the sum of \$1350.00.

As provided in the decision issued by the Arbitrator presiding over the November 13, 2020 hearing, the Arbitrator cancelled the 10 Day Notice to End Tenancy for Unpaid Rent the landlord served to the tenant in October 2020 but gave the landlord leave to reapply with respect to any unpaid rent. The Arbitrator upheld the *Two Month Notice to End Tenancy for Landlord's Use of Property* that was served in September 2020 with an effective date of November 30, 2020.

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, including the landlord's unopposed testimony and the shelter document provided as evidence, that the tenant was required to pay monthly rent of \$675.00 and he did not for the months of October 2020 and November 2020.

Where a tenancy is ended for landlord's use of property under section 49 of the Act, as was the case for this tenancy, a tenant is entitled to compensation. Section 51(1) of the Act provides that as compensation the tenant may withhold the rent payable for the last month of tenancy. As such, I find the tenant had a right to withhold rent for the month of November 2020 as this was the last month of tenancy.

I was not provided any evidence to suggest the tenant had a legal right to withhold rent for October 2020. Therefore, I award the landlord \$675.00 for the month of October 2020.

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

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant in the amount of \$437.50 [calculated as \$675.00 October 2020 rent + \$100.00 filing fee – \$337.50 security deposit].

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$437.50 to serve and enforce upon the tenant.

The tenant's application is dismissed without leave.

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: January 15, 2021

Residential Tenancy Branch