



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, RP, FFT

Introduction

On November 4, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 10 Day Notice to End Tenancy, to receive a Monetary Order for compensation, to reduce the rent, order repairs, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matter- Sever issues

The Tenant submitted five separate claims as part of this Application, and I was aware that we would not have the time to get to all of them during today’s hearing. I asked the Tenant to prioritize the issues that she wanted to address in this hearing; she stated that she wanted to address the request to cancel the 10 Day Notice to End Tenancy. For these reasons, I dismiss the request to receive a Monetary Order for compensation, to reduce the rent, and to order repairs with leave to reapply, in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

Preliminary Matter – Clarification of amendment and latest Notice to End Tenancy

The Tenant initially applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2020. Since that time, the Tenant has amended her Application and sought to cancel the 10 Day Notices to End Tenancy for Unpaid Rent that were served in January 2021. The Landlord agreed that the 10 Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2020, was invalid, that she was aware of the amendment and that she was ready to proceed.

Preliminary Matter – Settlement attempt

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent, dated January 8, 2021 (the “10 Day Notice”) be cancelled, in accordance with section 46 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed that there is no written Tenancy Agreement and agreed to the following terms of the tenancy:

The month-to-month tenancy began on April 20, 2019. The rent is \$2,100.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,050.00 and a pet damage deposit in the amount of \$1,050.00.

Both parties agreed that the Landlord served the most recent 10 Day Notice to the Tenant on January 8, 2021 with an effective (move-out) date of January 18, 2021. The 10 Day Notice indicated that the Tenant had not paid the \$300.00 as indicated in the repayment plan.

The Landlord testified that the Tenant had not paid the full amount of her rent in May and June 2020 and was in arrears for the amount of \$2,100.00. The Landlord submitted a copy of the Repayment Plan that was served to the Tenant on November

22, 2020. The Repayment Plan indicated that repayment was to begin on January 1, 2021 in the amount of \$300.00.

The Landlord testified that the Tenant did pay the full amount of the base rent, in the amount of \$2,100.00, for January 2021; however, failed to pay the \$300.00 pursuant to the repayment plan. The Landlord is requesting an Order of Possession for the rental unit based on the 10 Day Notice.

The Tenant submitted an email that she sent to the Landlord on March 25, 2020 advising that she may have trouble paying her rent for May 1, 2020 as a result of the pandemic and asked if the Landlord would prefer to receive 1 months' notice or receive half the rent while the crisis is happening.

The Tenant testified that the Landlord called her almost immediately. The Landlord agreed to receiving half the rent for May and June 2020. The Tenant submitted a text to demonstrate that she did not take an alternate rental arrangement as a result of the Landlord's agreement. The Tenant submitted an email from the Landlord that indicated that the Landlord rescinded her agreement to lower the rent in an email dated April 15, 2020.

The Tenant stated that the Landlord made an oral agreement to lower the rent for two months and that she should not have to repay the amount as there was an oral agreement in place.

When questioned, the Landlord acknowledged that she had had a conversation with the Tenant on March 25, 2020 about only paying half the rent in May and June of 2020. The Landlord stated that she was attempting to assist the Tenant during the pandemic; however, once the Landlord heard about the Canadian Emergency Response Benefit and the rental subsidies, the Landlord emailed the Tenant on April 15, 2020 and advised the Tenant that, "...I am rescinding any offer to lower your rent for May and June."

Analysis

On March 18, 2020, a provincial state of emergency was declared to support the province-wide response to the COVID-19 pandemic.

On March 30, 2020, the Minister of Public Safety and Solicitor General issued [Emergency Order #M089 \(PDF, 296KB\)](#) allowing changes to tenancy laws to protect renters from losing their homes.

On June 24, 2020, [Emergency Order #M195 \(PDF, 691KB\)](#) was issued, rescinding the order dated March 30, 2020. Emergency Order #M195 was later repealed as of July 30, 2020 when the [COVID-19 \(Residential Tenancy Act and Manufactured Home Park Tenancy Act\) Regulation](#) took effect.

I accept both the Tenant's and the Landlord's testimony that the Landlord orally agreed to accept half the rent from the Tenant, in the amount of \$1,050.00 for the months of May and June 2020. The Emergency Order prevented evictions for non-payment of rent during the specified period between March 30 and June 23, 2020. As such, I find that regardless of the Landlord's acceptance of the lower rent for May and June 2020, the tenancy was not at risk of ending for unpaid rent.

The details of the oral agreement are vague as the parties did not provide testimony or written documentation regarding whether the lower rent for May and June 2020 was repayable or not. I accept that many Landlord's were forced to receive little to no rent during the specified period and that the COVID-19 Regulation has provided guidance with regards to repayment plans.

Based on the both parties' evidence and the Landlord's undisputed testimony regarding the service of the Repayment Plan, dated November 22, 2020, I find that the Repayment Plan is valid and that the Tenant must pay the extra \$300.00 per month, pursuant to the Repayment Plan.

I accept that the Tenant applied for dispute resolution on November 4, 2020 to clarify the terms of the unpaid rent and that the Repayment Plan was subsequently served to the Tenant on November 22, 2020. Based on this, I find that it was not reasonable for the Landlord to serve the One Month Notice to end the tenancy for unpaid rent while the Tenant was awaiting this hearing.

As a result of the above findings, I cancel the One Month Notice and find that the tenancy will continue until ended in accordance with the Act.

To provide clarity for the parties and this tenancy, I have found that the Tenant is in rental arrears as claimed by the Landlord, in the amount of \$2,100.00. The arrears are as a result of the Tenant only paying half the amount of rent for May and June 2020.

The Tenant has been served a Repayment Plan and will owe the Landlord \$2,100.00 for monthly rent and a \$300.00 repayment, for a total of \$2,400.00, on February 1, 2021.

I find that the Tenant did not pay the \$300.00 repayment in January 2021 and the Landlord can either serve a recalculated Repayment Plan to the Tenant or continue collecting the monthly \$300.00 repayment until the rental arrears have been paid in full.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

As compensation for the filing fee, I authorize the Tenant to deduct \$100.00 from a future rent payment to the Landlord, in accordance with Section 72 of the Act.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent, dated January 8, 2021, is cancelled, in accordance with section 46 of the Act. The tenancy will continue until ended in accordance with the Act.

The Tenant is required to pay back all rental arrears in accordance with the Repayment Plan.

The Tenant is authorized to deduct \$100.00 from a future rent payment as compensation for the filing fee.

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 26, 2021

Residential Tenancy Branch