



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ante Enterprise Canada Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

TT: CNR, MNDCT, RR, RP, FFT
LL: MNRL-S, FFL

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- A monetary award for damages and loss pursuant to section 67;
- An order to reduce rent for services and facilities not provided pursuant to section 65;
- An order for repairs pursuant to section 33; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing by their agents who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal tenant was represented by their family member agent (the “tenant”). The corporate landlord was represented by its agents and their counsel.

As both parties were represented service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them at the same hearing. I was originally scheduled to only hear the tenant's application but as the parties confirmed that they were in possession of all relevant materials and prepared to proceed and as I find that the applications pertain to the same issue of the condition of the rental unit, the landlord's right to rent and the same facts would be considered I ordered that the matters be combined.

At the outset of the hearing the parties testified that the tenant has vacated the rental unit and the tenancy has ended. The tenant withdrew the portions of their application pertaining to an ongoing tenancy.

Issue(s) to be Decided

Is either party entitled to a monetary award as sought?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant has been residing in the rental property for over 25 years. The landlord assumed this tenancy when they purchased the property in or about 2016. The monthly rent at the end of the tenancy was \$3,300.00 payable on the first of each month. A security deposit of \$1,650.00 is held by the landlord.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated August 15, 2020 with an effective date of December 31, 2020 (the "2 Month Notice"). The tenant did not file an application to dispute the notice.

The tenant failed to pay rent for the month of November 2020 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated November 20, 2020 with an effective date of December 1, 2020 (the "10 Day Notice"). The tenant filed their present application to dispute the 10 Day Notice on November 23, 2020. The tenant subsequently failed to pay any rent for December 2020. The parties agree that the tenant vacated the rental unit as of December 31, 2020.

The tenant submits that they were not required to pay rent for the months of November and December 2020 as the rental unit suffered from multiple deficiencies, most notably an absence of heat. The tenant testified that the rental unit had numerous issues which the landlord failed to rectify and that they are therefore entitled to withhold the whole of the monthly rent. The tenant also submits that as they were issued a valid Notice to End Tenancy for Landlord's Use they were entitled to withhold the equivalent of one month's rent pursuant to section 51 of the *Act*.

Despite not having paid rent for the months of November and December 2020 the tenant claims a monetary award in the amount of \$6,600.00, the equivalent of rent for those two months from the landlord. The tenant also submits that they incurred costs of \$2,700.00 for renting another suite to occupy during the month of December due to the condition of the rental unit.

The landlord submits that the tenant had no basis in the *Act* to withhold rent for November 2020 and the full amount of \$3,300.00 was payable on November 1, 2020. The landlord disputes that there were issues with the rental unit to the degree alleged by the tenant and that any issues were inspected and addressed in a timely manner. In addition to the unpaid rent, the landlord seeks a monetary award in the amount of \$770.00 for inspection conducted of the vent system and property in response to complaints made by the tenant.

The landlord submits that the tenant waived their right to compensation in an amount equivalent to one month's rent pursuant to section 51 of the *Act* when they unilaterally withheld the rent for the month of November 2020 giving rise to the issuance of the 10 Day Notice. The landlord submits that while the tenant vacated the rental unit before the date of the present hearing to determine whether the 10 Day Notice should be cancelled the underlying reason for the issuance of the notice, the tenant's failure to pay rent in accordance with the tenancy agreement, was valid and the period that the tenant continued to occupy the rental unit after the effective date of the 10 Day Notice should be considered overholding rather than the continuation of the tenancy.

The landlord seeks a monetary award in the amount of \$6,600.00, the equivalent of the rent for the months of November and December, 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant, having unilaterally chosen to withhold any payment towards rent for the months of November and December 2020, now seeks a monetary award in the amount of \$6,600.00 for rent which they have not paid. As the tenant has not paid any amount for rent and have not incurred any loss I find that there is no basis for a monetary award and accordingly dismiss this portion of their application.

Regarding the issue of whether the landlord is entitled to a monetary award for the unpaid rent or the tenant is entitled to a retroactive finding that they were authorized to make the deductions they chose I make the following findings.

Pursuant to 26(1) of the *Act*, 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.

I find that there was an effective tenancy agreement between the parties wherein the tenant was obligated to pay rent in the amount of \$3,300.00 on November 1, 2020. I find the tenant had no right to withhold the monthly rent payment of \$3,300.00 despite their complaints about the condition of the suite.

Despite being issued a 2 Month Notice it was not open to the tenant to unilaterally choose to withhold rent for a particular month. As noted in section 51(1.1) of the *Act* a tenant may withhold the amount authorized from the last month's rent. In the matter at hand, as the Notice provided an effective date of December 31, 2020 it was not open for the tenant to fail to pay rent for any month other than December 2020.

I find insufficient evidence to support the tenant's submission that the rental unit was so deficient that it gives rise to a basis for a retroactive reduction in rent or a monetary award. I find the tenant's submissions to consist primarily of subjective complaints that are so hyperbolic in nature that they lack any air of reality or proportionality. I find the correspondence between the parties to demonstrate a landlord with a great deal of empathy and patience in dealing with the volume of complaints made by the tenant. I find the submissions of the tenant including photographs, video recordings and copies of correspondence to not show a rental unit so deficient that it would give rise to a monetary claim but a suite that is in reasonable condition for its age and character. I accept the landlord's submission that they have attempted to address the tenant's frequent requests in a timely, professional and reasonable manner. I find that the tenant has failed to meet their evidentiary burden on a balance of probabilities to show that there has been any loss in the value of the tenancy that gives rise to a reduction in the rent payable.

Similarly, I find the tenant's claim for the cost of alternate lodging during the month of December 2020 to have little basis. Based on the totality of the evidence I am not convinced that the rental unit was so deficient that it necessitated the tenant to vacate the premises. I find that the cost of alternate housing is not borne out of any breach on the part of the landlord and therefore not a loss for which the tenant is entitled to compensation.

Section 51 of the Act provides that:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Accordingly, the tenant, having received a Notice dated August 15, 2020 with an effective date of December 31, 2020 was entitled to receive on or before December 31, 2020 an amount equivalent to one month's rent payable under the tenancy agreement.

However, the tenant failed to pay rent for the month of November 2020 giving rise to the issuance of a 10 Day Notice. As noted above, I have found that the tenant had no basis under the Act or regulations to fail to pay rent in accordance with the tenancy agreement. In addition I find that the 10 Day Notice conforms to the form and content requirements of section 52 of the Act as it is signed and dated by the landlord, provides

the address of the rental unit, the effective date of the notice and the reason for the tenancy to end. As such, I find that the 10 Day Notice was effective on the date provided on the notice, December 1, 2020.

I find that the subsequent period when the tenant continued to occupy the rental unit was not a continuation of the tenancy but rather the tenant overholding after the tenancy has ended. The fact that the tenant vacated the rental unit on the date that is the effective date of the 2 Month Notice is irrelevant to the matter. The issuance of the notice of August 15, 2020 did not waive the tenant's obligation to pay rent in accordance with the tenancy agreement nor did it give rise to a tenant's entitlement to compensation regardless of breaching their own requirement to pay the monthly rent. Simply vacating the rental unit on the effective date of the 2 Month Notice does not give effect to that notice.

Based on the evidence, including the conduct of the parties at the time, their correspondence and testimony it is clear that when the tenant failed to pay rent as was required on November 1, 2020, the landlord intended for the tenancy to end in accordance with the 10 Day Notice. I find that the tenancy effectively ended in accordance with the 10 Day Notice which supplanted the 2 Month Notice of August 15, 2020.

Therefore, the tenant is not entitled to any compensation pursuant to section 51 of the *Act* and the landlord is entitled to claim compensation from the overholding tenant for the period of December 2020 in accordance with section 57(3).

Based on the foregoing I find that the tenant remained obligated to pay all of the rent payable under the tenancy agreement and that the landlord is entitled to a monetary award in the amount of \$6,600.00, the equivalent of the rent for the months of November and December 2020.

I find insufficient evidence in support of the portion of the landlord's claim seeking the cost of inspection of the rental unit. While the inspections were done at the request of the tenant, I find that these are not costs incurred due to any breach on the part of the tenant. These inspections were merely the landlord accommodating the tenant's request. There was no obligation to commission an inspection. While the tenant's ongoing complaints and communication may have been bothersome and I find little basis for their grievances, I find that simply making subjective complaints and requests is not a breach of the *Act*, regulations or tenancy agreement that gives rise to a basis for a monetary award.

As the landlord was primarily successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$5,050.00, allowing for the recovery of the unpaid rent, compensation for overholding and the filing fee for this application and to retain the security deposit. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: February 16, 2021

Residential Tenancy Branch