



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNRL -S, MNDCL -S, FFL

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a Landlord's application for an Order of Possession and Monetary Order for unpaid rent.

Only the landlord appeared at the hearing, despite leaving the teleconference call open at least 15 minutes to permit the tenant the opportunity to appear.

The landlord confirmed that he received the tenant's Application for Dispute Resolution. Since the tenant failed to appear for her hearing, I dismissed her Application for Dispute Resolution without leave to reapply.

As for the landlord's Application for Dispute Resolution, the landlord submitted a registered mail receipt, including tracking number, as proof the landlord's hearing documents were sent to the tenant via registered mail on December 23, 2020. The landlord stated the registered mail was sent to the tenant at the rental unit but that the mail was returned as the tenant did not pick it up. The landlord confirmed that the tenant continues to occupy the rental unit. Section 90 of the Act deems a person to have received documents mailed to them five days after mailing, even if the person refuses to pick up their mail. In keeping with section 90 of the Act, I deemed the tenant to have received the landlord's proceeding package five days after mailing, on December 28, 2020, and I continued to hear from the landlord's application without the tenant present.

I noted that the name of the landlord was different on the two Applications for Dispute Resolution before me. The landlord named on the tenancy agreement was before me. He explained the other named landlord is his wife and she is also a co-owner of the

property. As such, I was satisfied that both named landlords meet the definition of “landlord” under section 1 of the Act and the style of cause reflects both owners.

I noted that the last name of the tenant was different on the two Applications for Dispute Resolution before me. The landlord had named the tenant as being that reflected on the tenancy agreement and stated that is the only name he knows for the tenant. Since the tenant was not before me to explain why she used a shorter version of the name, I have included both of the last names in the style of cause.

Finally, the landlord requested during the hearing that the landlord’s claim be amended to add loss of rent that was incurred on December 15, 2020 and January 15, 2021 since the tenant continues to occupy the rental unit; and, to obtain authorization to retain the tenant’s security deposit in partial satisfaction of the unpaid rent. The Rules of Procedure provide for amending a claim during the hearing, as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the landlord’s request to amend the claim ought to have been reasonably anticipated by the tenant in the circumstances described to me and in keeping with Rule 4.2 I grant the landlord’s request to amend the landlord’s claim.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent in the amounts claimed?
3. Are the landlords authorized to retain the tenant’s security deposit?
4. Award of the filing fee.

Background and Evidence

The landlord submitted that, pursuant to a written tenancy agreement, the tenancy started on April 15, 2020 and the tenant is required to pay rent of \$850.00 on the 15th day of every month. The tenant paid a security deposit of \$425.00.

The landlord testified that during the tenancy the tenant started paying a portion of the rent on the first of the month and the landlord was agreeable to that practice; however, they did not formally amend the written tenancy agreement.

On November 3, 2020 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant indicating she failed to pay rent of \$900.00 as of November 1, 2020 and an effective date of November 20, 2020. The landlord testified that sum was the portion of rent the tenant usually paid on the first of the month and arrears from the “specified period” related to Covid-19. The tenant filed to dispute this 10 Day Notice citing loss of funds due to Covid-19 illness as being the reason for not paying rent. The landlord testified that he subsequently determined the 10 Day Notice dated November 3, 2020 may be inaccurate and unenforceable so he issued a replacement 10 Day Notice to End Tenancy for Unpaid Rent on November 20, 2020 indicating the tenant failed to pay rent of \$850.00 that was due on November 15, 2020. The landlord placed this second 10 Day Notice in the tenant’s mailbox on November 20, 2020 and it has an effective date of December 10, 2020.

The landlord testified that the tenant did not pay the outstanding rent that was due on November 15, 2020. Nor, did the landlord receive any monies for rent for the subsequent months. The landlord seeks an Order of Possession based on the 10 Day Notice issued on November 20, 2020 and to recover unpaid and/or loss of rent for: November 15, 2020, December 15, 2020 and January 15, 2021 since the tenant continues to occupy the rental unit.

As documentary evidence, the landlords provided a copy of the tenancy agreement; the 10 Day Notice issued on November 20, 2020; a signed Proof of Service for service of the 10 Day Notice on November 20, 2020; and, the registered mail receipt for sending the landlord’s proceeding package to the tenant.

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.

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. 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.

Due to the Covid-19 pandemic there was a moratorium on ending a tenancy due to unpaid rent for a period of time; however, the moratorium was lifted for rent that was due and not paid starting August 18, 2020.

Based on the written tenancy agreement, I find the tenant was obligated to pay rent of \$850.00 on the 15th day of every month.

I accept the unopposed evidence before me that the landlord issued two 10 Day Notices to the tenant, the first of which the tenant disputed and the landlord acknowledged to be inconsistent with the tenancy agreement and likely unenforceable. Therefore, I do not find the tenancy at an end due to the 10 Day Notice dated November 3, 2020.

As for the 10 Day Notice served by leaving it in the tenant's mailbox on November 20, 2020, I was provided unopposed evidence the tenant did not pay the outstanding rent within five days of receiving the 10 Day Notice left in the mailbox. The only reason the tenant put forth for not paying rent, as indicated on her Application for Dispute Resolution, is the lack of funds due to the Covid-19 virus; however, that is not a legal basis for not paying rent after the moratorium on evictions for unpaid rent was lifted. The 10 Day Notice issued on November 20, 2020 is consistent with the tenancy agreement and is in the approved form. Therefore, I find the tenancy came to an end on December 10, 2020 due to the 10 Day Notice issued on November 20, 2020 and I provide the landlord with an Order of Possession effective two (2) days after service.

As for the landlord's monetary claim, I find the landlords entitled to the rent that was unpaid for November 15, 2020 in the amount of \$850.00. Further, since the tenant continues to hold possession of the rental unit without paying the landlord any compensation for her continued possession of the unit, I find the landlords entitled to recover loss of rent of \$850.00 that was incurred on December 15, 2020 and \$850.00 that was incurred on January 15, 2021.

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

In light of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, in the sum of \$2225.00 [calculated as \$850.00 x 3 months + \$100.00 filing fee - \$425.00 security deposit].

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant. The landlords are authorized to retain the tenant's security deposit as partial satisfaction of the unpaid rent and the landlords are provided a Monetary Order for the balance owing of \$2225.00 to serve and enforce upon the tenant.

The tenant's Application for Dispute Resolution is dismissed without leave to reapply. 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 02, 2021

Residential Tenancy Branch