



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$4,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord originally made this application by way of a direct request. However, in a written decision dated November 18, 2020, the presiding adjudicator determined that a participatory hearing was necessary and ordered the matter reconvened to this hearing.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:18 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord and his wife ("**SB**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his wife, and I were the only ones who had called into this teleconference.

The landlord and SB testified that they served the tenant with the interim decision, notice of reconvened hearing, and evidence package on the tenant by placing it in her mailbox shortly after receiving the interim decision. I find that she was duly served.

Preliminary Issue – Order of Possession

At the outset of the hearing, the landlord advised me that the tenant no longer resides in the rental unit. As such, the landlord no longer requires an order of possession. Accordingly, I dismiss this portion of the landlord's application, without leave to reapply.

Issues to be Decided

Is the landlord entitled to::;

- 1) a monetary order for \$4,800;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord and SB, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord and SB purchased the rental unit on August 28, 2020. The tenant was rising in the rental unit at that time. On September 2, 2020, the parties entered into a fixed term tenancy agreement, ending March 31, 2021. Monthly rent was \$1,600. The prior owner of the rental unit transferred the tenant's security deposit of \$800 to the landlord as part of the sale of the rental unit. The landlord continues to hold this amount in trust.

The landlord testified that the tenant has not paid any rent for the months of September, October, or November 2020. He testified that he served a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") on the tenant on September 8, 2020, specifying arrears of \$1,600. The effective date of the Notice was September 15, 2020. He testified that the tenant did not dispute the Notice and that she did not pay the rent owed. The tenant did not communicate

On November 12, 2020, the landlord and AB attended the rental unit and discovered that the tenant had vacated it. She did not provide any notice to the landlord of this.

The landlord testified that they were able to re-rent the rental unit for December 1, 2020.

The landlords seek payment for the arrears for September, October, and November 2020.

Analysis

Section 26 of the Act requires tenants to pay rent when it is due:

Rules about payment and non-payment of rent

26 (1)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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 44(2) of the Act sets out how a tenant may end a fixed term tenancy:

Tenant's notice

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the landlord's testimony, I find that the tenant did not give any notice to end her fixed term tenancy, and did not pay any rent for September, October, or November 2020.

I note that section 44(1)(d) of the Act states that a tenancy is ended when the tenant vacates or abandons a rental unit. I cannot say when this occurred.

However, as the tenant vacated the rental unit prior to the end of the fixed term, she breached the tenancy agreement. The tenant is responsible for paying rent for the full duration of the term, subject the landlord's obligation to act reasonably to minimize their losses caused by the breach.

I find that the landlord learned that the tenant had vacated the rental unit on November 12, 2020, and that he re-rented the rental unit for December 1, 2020. I find that this is a reasonable period of time within which to re-rent the rental unit.

As such, I find that the tenant has failed to pay rent when it was due for the months of September, October, and November 2020. In the event she vacated prior to October 1 or November 1, 2020, I find that the tenant breached the tenancy agreement by moving out prior to the end of the fixed term, and cause damage to the landlord in the amount equal to the amount of rent owing from the date she moved out to December 1, 2020 (when the rental unit was re-rented).

Under either scenario, the landlord is entitled to recover an amount equal to three months' rent from the tenant (\$4,800). Accordingly, I order that the tenant pay the landlord this amount.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenant (\$100).

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit (\$800) in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$4,100, representing the following:

| Description | Amount |
|---|-------------------|
| Rent arrears/loss of rent (Sept to Nov) | \$4,800.00 |
| Filing fee | \$100.00 |
| Security deposit credit | -\$800.00 |
| Total | \$4,100.00 |

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 4, 2021

Residential Tenancy Branch