



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR, CNC, RR, LRE, RP, OLC, FFT

Landlord's application: FFL, OPR-DR, OPRM-DR

Introduction

This hearing was scheduled to deal with cross applications, via teleconference call. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and several other remedies. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent.

The landlord appeared for the hearing; however, there was no appearance on part of the tenants despite leaving the teleconference call open for at least 20 minutes to give the tenants an opportunity to appear.

The landlord testified that she was not served with the tenant's proceeding package. Since the tenants did not appear or otherwise prove they served the landlord with their proceeding package, I dismissed the tenant's application.

The landlord testified that she sent the landlord's proceeding package to each tenant via registered mail on December 10, 2020 at the rental unit address. The landlord provided registered mail receipts, as proof of service. The landlord confirmed that the tenants were still residing in the rental unit in December 2020. A search of the registered mail tracking numbers showed the registered mail packages were picked up on December 17, 2020 and December 24, 2020, respectively. I was satisfied the tenants were duly served with the landlord's proceeding packages and I continued to hear from the landlord without the tenants present.

During the hearing, the landlord requested the application be amended to request authorization to retain the tenants' security deposit in partial satisfaction of the unpaid

rent. I find this request is non-prejudicial to the tenants since it would reduce any Monetary Order I were to provide to the landlord and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, as claimed?
3. Is the landlord authorized to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The one year fixed term tenancy started on December 1, 2019 and was set to continue on a month to month basis upon expiry of the fixed term. The tenants paid a security deposit of \$500.00 and were required to pay rent of \$1000.00 on the first day of every month.

The tenants failed to pay rent for the month of November 2020 and on November 20, 2020 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates rent of \$1000.00 was outstanding as of November 1, 2020 and has a stated effective date of November 30, 2020.

The landlord testified that the tenants did not pay the outstanding rent after the 10 Day Notice was served. Nor, did the tenants vacate the rental unit by November 30, 2020. The landlord testified that the tenants continued to occupy the rental unit in December 2020 and January 2021 without paying any more monies for their continued occupation of the rental unit.

The landlord also stated that on January 28, 2021 the tenant living in the upper unit informed the landlord that the tenants likely vacated the rental unit. The landlord went to the property on January 29, 2021 and looked into the windows of the rental unit but did not enter the rental unit. The landlord stated that it appears the tenants may have vacated as there appeared to be only a few pieces of furniture left behind but the tenants did not notify the landlord they were vacating or return the keys.

The landlord requested an Order of Possession in the event the tenants have not yet vacated or abandoned the rental unit. The landlord also applied for unpaid and/or loss

of rent in the sum of \$4000.00 on the following basis, as set out on the Application for Dispute Resolution:

- “The tenant did not pay rent for November and December 2020, also the projected rent for Jan and Feb 2021 if they don’t move out.”
- “The tenant did not pay the rent for November and December of 2020, I also add Rent of Jan and Feb 2021 In case they don’t vacant the rental unit before hearing day.”

The landlord provided a copy of the tenancy agreement and 10 Day Notice as documentary evidence for this proceeding.

The landlord attempted to introduce oral evidence concerning unpaid utilities; however, I did not permit her to do so since she had not made a claim for unpaid utilities. I informed the landlord of her right to make another Application for Dispute Resolution for other damages or losses incurred as a result of this tenancy that were not made in this Application for Dispute Resolution.

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.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1000.00 on the first day of every month and the tenants failed to do so for the month of November 2020. I also accept that a 10 Day Notice was posted to the tenant’s door on November 20, 2020. The tenants failed to dispute the 10 Day Notice on November 20, 2020 and, as such, I find the tenants received the 10 Day Notice on November 2020.

I accept the unopposed evidence before me that the tenants did not pay the outstanding rent for November 2020 at any time. As such, they did not nullify the 10 Day Notice with

payment. While the tenants did file to dispute the 10 Day Notice, they did not serve their Application for Dispute Resolution upon the landlord. In any event, the reason the tenants provided for not paying the rent is not a legal basis for withholding rent from the landlord (the tenants submitted that they did not have the money to pay rent and move).

In light of the above, I uphold the 10 Day Notice and I find the tenancy ended on November 30, 2020. Accordingly, I grant the landlord's request for an Order of Possession to serve and enforce upon the tenants in the event they have not already vacated or abandoned the rental unit. The Order of Possession is effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenants the unpaid rent for November 2020 in the amount of \$1000.00. Having heard unopposed evidence that the tenants continued to occupy the rental unit during the months of December 2020 and January 2021, I find the tenants continued occupation of the rental unit caused the landlord to suffer loss of rent for the months of December 2020 and January 2021 and I award the landlord loss of rent for those two months.

I make no award for loss of rent for February 2021 with this decision as the landlord had stated on her Application for Dispute Resolution that she was seeking loss of rent in the event the tenants did not move out. Accordingly, I find the landlord's loss of rent to be dependent on whether the tenants moved out. The landlord received notification from her upper tenant on January 28, 2021 that the tenants had moved out; however, the landlord did not post a Notice of Entry and enter the rental unit to determine whether the tenants had moved out and I find she has not satisfied me that the tenants are still occupying the rental unit in February 2021. Therefore, I do not further consider her claim for loss of rent for February 2021 based on the tenants continued occupancy of the rental unit in February 2021 and I give the landlord leave to reapply for loss of rent for February 2021 if she seeks to make such a claim under a different basis.

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 tenants, calculated as follows:

| | |
|--------------------------------|-----------------|
| Unpaid rent for November 2020 | \$1000.00 |
| Loss of rent for December 2020 | 1000.00 |
| Loss of rent for January 2021 | 1000.00 |
| Filing fee | 100.00 |
| Less: security deposit | <u>(500.00)</u> |
| Monetary Order | \$2600.00 |

Conclusion

The landlord is provided an Order of Possession to serve and enforce upon the tenants if the tenants have not already vacated or abandoned the rental unit.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$2600.00 for unpaid and/or loss of rent up to and including the month of January 2021. The landlord is at liberty to reapply for loss of rent after January 2021 or any other damages or losses by way of another Application for Dispute Resolution.

The tenant's Application for Dispute Resolution 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: February 11, 2021

Residential Tenancy Branch