



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC-MT, RP, OLC, LRE
OPRM-DR, OPR-DR, FFL

Introduction

This hearing dealt with two applications application pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s 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 \$1,450 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**10 Day Notice**”) pursuant to section 46;
- the cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**One Month Notice**”) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the 10 Day Notice and the One Month Notice (collectively, the “**Notices**”) pursuant to section 66; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

The tenant attended the hearing. The landlord was represented at the hearing by its director and owner (“**GB**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Matter – Identity of landlord

On the landlord’s application, the landlord is identified as a corporate entity. On the tenant’s application, the landlord is identified as GB. At the outset of the hearing, the tenant agreed that the corporate landlord is the proper name of the respondent landlord on her application and consented to her application being amended to reflect that.

Preliminary Matter – Service of Documents

The parties agreed that each had served the other with their respective hearing packages and the bulk of their documentary evidence. However, GB testified, and the tenant agreed, that the tenant did not serve the landlord with several photographs of RCMP business cards. Similarly, the tenant testified, and GB agreed, that the landlord did not serve the tenant with a copy of a photograph of a moving truck. I exclude these documents from evidence and deemed that all other documents have been served in accordance with the Act.

Preliminary Matter – Tenant no longer resides at rental unit

The tenant vacated the rental unit on February 10, 2021. As such, she no longer requires any of the relief sought in her application. Accordingly, and with her consent, I dismiss her application, in its entirety, without leave to reapply. I note that this dismissal does not prevent her from bringing any future claim (on other grounds) against the landlord (she indicated that such an application would be likely).

Similarly, the landlord no longer requires an order of possession. As such, I dismiss that portion of its application, without leave to reapply. The balance of this decision will address the remaining issues.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,450;
- 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 parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting October 1, 2020. Monthly rent is \$1,450 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$700. The landlord still retains this deposit.

The parties agree that the tenant did not pay the landlord any amount of rent for the month of February 2021.

The tenant testified that GB was harassing her in late January 2021 regarding having an unauthorized occupant in the rental unit. She testified that he threatened to burn down

the rental unit. She testified that the RCMP advised her not to have contact with GB. She testified that GB's wife was supposed contact her to collect the rent but did not. She testified that she received the 10 Day Notice on February 2, 2021, and that the RCMP provided her with GB's email address for the purposes of making an e-transfer payment on February 4, 2021. She filed an application to dispute the 10 Day Notice on February 3, 2021.

The tenant testified that the landlord disposed of certain of her belongings left in the rental unit (including some with a great deal of sentimental value to her) on February 14, 2021. She testified that she left them in the rental unit after vacating because she understood that she would have access to the rental unit until March 3, 2021 (per the One Month Notice), and was intending on retrieving them before that date.

The tenant argued that she should not have to pay for February 2021 rent due to GB's conduct.

GB denied the allegations regarding his conduct. He testified that he made a typo in a text message (inadvertently typing "cause" instead of "because") which caused the tenant to interpret the message as a threat to burn down the rental unit (a copy of this text message was not entered into evidence).

GB argued that the landlord was entitled to receive February rent from the tenant, as it was due under the tenancy agreement.

Analysis

Section 26 of the Act states:

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.

As such, any alleged misconduct of GB does not form a basis under the Act to withhold the payment of rent. Rent must be paid when it is due. In this case, it was not.

The tenant was obligated to pay the landlord \$1,450 on the first of every month until the tenancy ended. On February 1, 2021, the tenancy still existed. As such, she was obligated to pay that month's rent. She failed to do this. (I note that the fact the tenant vacated the rental unit on February 10, 2021 does not retroactively change the amount of rent she must pay for the month of February. She is responsible for paying the entire month's rent, regardless of the fact she moved out 1/3 of the way through it.)

If the tenant believes the conduct of GB caused her damage or monetary loss, her proper course of action was to pay rent as it was due, and then apply for monetary compensation against the landlord. She did not do this. As noted above, at the hearing the tenant indicated that she may file such an application in the future.

I explicitly make no findings of fact regarding any alleged misconduct of GB, as such findings are not relevant to the determination of this application.

Pursuant to section 67 of the Act, I order the tenant to pay the landlord \$1,450, representing the unpaid rent for February 2021.

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

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit 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 \$850, representing the following:

Description	Amount
February Arrears	\$1,450.00
Filing Fee	\$100.00
Security Deposit Credit	-\$700.00
Total	\$850.00

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: May 10, 2021

Residential Tenancy Branch