



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNRL-S, MNCL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that it received the Landlord’s evidence packages.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation?

Is the Landlord entitled to retain to the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy started on September 1, 2019. Rent of \$950.00 is payable on the first day of each month. At the outset of the tenancy the

Landlord collected \$475.00 as a security deposit. On September 12, 2020 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent and a one-month notice to end tenancy for cause (the "Notices"). The 10-day notice sets out an effective date of September 25, 2020 and the one-month notice sets out an incorrect effective date of October 15, 2020.

The Landlord states that it did not pursue the end of the tenancy pursuant to the Notices as the Tenants needed more time to find another rental unit. The Landlord states that it repeatedly and verbally gave the Tenants more time. The Landlord states that it continued to collect rents after the effective dates of the Notices and did not issue any receipts for use and occupancy. The Tenant states that they understood that the Landlord agreed to continue the tenancy or that the Landlord had reinstated the tenancy. The Tenant does not agree that the Landlord only agreed to give them more time to locate another rental.

The Landlord withdraws its claim for unpaid rent. The Landlord claims \$1,500.00 for future rental losses.

Analysis

Section 55(2)(b) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Policy Guideline #11 sets out the following:

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant. For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the

period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Given the Landlord's testimony that it repeatedly gave the Tenants more time to find another rental after the effective dates of the Notices had passed, considering that the tenancy continued after the effective date of the Notices for another 5 months, and given the Tenant's testimony that it considered that the Landlord had continued the tenancy I find that the Parties impliedly waived the Notices and agreed to continue the tenancy. The Notices are therefore cancelled and not effective to end the tenancy. I dismiss the Landlord's claim for an order of possession based on the Notices.

As the Landlord made a future and unknown claim for lost rental income and as the Landlord seeks to withdraw its claim of unpaid rent, I dismiss these claims with leave to reapply. As the tenancy has not ended, I dismiss the Landlord's claim to retain the security deposit with leave to reapply. As the Landlord's claim have not been successful in these proceedings, I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim.

Conclusion

The Notices are cancelled and of no effect. The tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 10, 2021

Residential Tenancy Branch