



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mapleleaf Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR, FFT
OPR, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant as against a landlord seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application. Another application by a landlord as against the tenant has been joined to be heard with the tenant's application seeking an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant. The landlord named in the applications is not the same. The landlord named in the landlord's application is the landlord named in the tenancy agreement.

An agent for the landlord attended the hearing but did not testify. A property manager of the landlord gave affirmed testimony. Legal Counsel attended the hearing as agent for the tenant. The parties have each provided evidentiary material in advance of the hearing, however the landlord also provided additional evidence the day before the hearing which was not provided to the tenant. All evidence other than the late evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's property manager (hereafter referred to as the landlord) testified that this fixed-term tenancy began on January 1, 2018 and reverted to a month-to-month tenancy after December 31, 2018. Rent in the amount of \$1,765.00 was payable on the 1st day of each month, which was increased during the tenancy to \$1,856.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$882.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in an apartment building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on May 3, 2021 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by taping it to the door of the rental unit. A copy of 2 pages of the 3-page notice has been provided for this hearing and it is dated May 3, 2021 and contains an effective date of vacancy of May 16, 2021. A proof of service document has also been provided for this hearing.

The previous property manager no longer works for the landlord. The current landlord checked an Arrears Report and took action after asking questions of the building manager; the landlord discovered that no one from the landlord's office ever applied for an Order of Possession. The landlord has not received rent from the tenant for over a year, and the tenant is in arrears the sum of \$24,128.00 to the end of August, 2021.

The landlord seeks an Order of Possession so that the tenant's belongings can be removed and the landlord could re-rent. The landlord seeks a monetary order for unpaid rent totalling \$22,272.00 which includes this month's rent, and has provided a Monetary Order Worksheet totaling \$18,660.00 for:

- \$15,860.00 for unpaid rent for August, 2020 to May, 2021;
- \$100.00, being \$25.00 for each of the months of August, 2020 to November, 2020 for NSF Fees.

A lengthy string of emails exchanged between the tenant, the tenant's Legal Counsel and an agent of the landlord have been provided for this hearing by the tenant, wherein the landlord's agent states that the tenancy was terminated. The landlord testified that the landlord's agent no longer works for the landlord, however last month the rental unit was still full of furniture, clothing and other personal belongings. No efforts were made

to re-rent because the rental unit is full of the tenant's furniture and is therefore not leasable, and the owner does not want to continue the tenancy.

Legal Counsel submits that evidence shows that the tenant's items were removed from the rental unit in October, 2020, 60 days prior to December 25, 2020, and should only be required to pay rent from August, 2020 to October, 2020. The tenant should only have to pay rent to the date the landlord terminated the tenancy and reasonable storage fees.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, however I am not satisfied that the landlord has established that it was served in the approved form, which is required by law; the landlord has only provided pages 1 and 3 only of the 3-page Notice. Therefore, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2021 and the tenancy continues. The landlord's application for an Order of Possession based on that Notice is hereby dismissed.

With respect to the landlord's application for a monetary order, I have reviewed all of the evidentiary material. With respect to the strings of emails, I find as follows:

- On June 24, 2020 the tenant emailed the landlord stating that the tenant was stuck in Indonesia since the middle of March due to COVID-19, and the parties continued to communicate by email.
- On July 30, 2020 the landlord's property manager replied to the tenant's email about negotiating the rental arrears amount.
- On December 25, 2020 the landlord's property manager advises the tenant that the landlord had to terminate the tenancy for unpaid rent and had placed items in storage, and if the tenant wanted to reinstate the tenancy the tenant needed to pay the outstanding rent.
- An undated email from the property manager states that since the tenant was deemed to have abandoned, the tenants belongings were moved to a safe, locked storage which the landlord is obliged to do so for 60 days and that period had already passed.

- On January 27, 2021 the landlord's property manager emailed the tenant saying he will send a repayment plan once the Senior Property Manager had approved it and asks if the tenant would sign a new 1-year lease upon return to the City.
- The tenant agreed to a new term same day.
- On March 3, 2021 the property manager replied to the tenant that \$14,848.00 is owing and to access the rental unit the tenant will need to pay \$7,500.00 and sign a new 1 year lease. The repayment plan shows \$6,000.00 to be paid by February 1, 2021; and \$5,286.00 in 10 equal installments from March 1, 2021 to December 1, 2021. It is not signed by either party.

The regulations to the *Residential Tenancy Act* deal with abandonment of personal property:

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or
 - (ii) from which the tenant has removed substantially all of the tenant's personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
- (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Whether or not the previous property manager advised the tenant that the tenancy had been terminated, the *Act* specifies how a tenancy ends, and I find that it has not ended in accordance with the law. The landlord knew that or the landlord would not have issued a notice to end the tenancy. Further, a landlord may only consider it as abandonment if the tenant gave the intention that he did not intend to return or could not reasonably be expected to return. In this case, there are numerous emails exchanged between the parties indicating that the tenant was out of Country, not able to get back to Canada due to COVID-19 and definitely wanted to return to the City and the rental unit as soon as he was able to. The tenant even agreed to sign another 1 year lease. That is not abandonment.

The landlord's application claims \$18,660.00 of unpaid rent from August 1, 2020. The landlord also testified that the tenant owes \$22,272.00 which includes this month's rent, and also testified that the tenant owes \$24,128.00 to the end of August, 2021, however that does not make any sense. I also find that the landlord's Monetary Order Worksheet contains an addition error, but also NSF fees which are contained in the tenancy agreement and permitted by law.

Given that the tenancy has not ended in accordance with the *Act*, and the tenant still occupies the rental unit, I find that the tenant is required to pay the rent, and I so order. Rent has not been paid for August, 2020 through to September, 2021, which amounts to 13 months, at \$1,856.00 per month is \$24,128.00. Since the landlord's Monetary Order Worksheet indicates 4 claims of \$25.00 late rent or NSF fees, I find that the landlord is entitled to those amounts only, or \$100.00.

The landlord has also applied for an order permitting the landlord to keep the \$882.50 security deposit. I order the landlord named in the tenancy agreement and on the Landlord's Application for Dispute Resolution to keep the security deposit and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$23,345.50.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees.

Conclusion

The landlord's application for an Order of Possession is hereby dismissed.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2021 is hereby cancelled and the tenancy continues.

I hereby order the landlord to keep the \$882.50 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$23,345.50.

This order is final and binding and may be enforced.

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: September 10, 2021

Residential Tenancy Branch