



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stratatech Consulting Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL, MNDL, MNDCL

Introduction

This participatory hearing was scheduled pursuant to a decision issued by an Adjudicator on July 9, 2021 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure.

At the hearing, only the landlord's agents appeared. There was no appearance on part of the tenant despite leaving the teleconference call open approximately 30 minutes.

As seen in the Adjudicator's decision of July 9, 2021, the landlord was required to serve the tenant with notification of the participatory hearing. The landlord provided a registered mail receipt, including tracking number, as proof the tenant was sent notification of the hearing, at the rental unit address, by registered mail on July 14, 2021. The landlord confirmed that the tenant was still residing at the rental unit at that time. I was satisfied the landlord met its obligation to serve the tenant in a manner that complies with the Act and I continued to hear this application despite the tenant's absence.

The landlord then submitted an Amendment to an Application for Dispute Resolution along with additional evidence seeking to increase its monetary claim against the tenant. The landlord submitted a registered mail receipt, including tracking number, as proof the Amendment and additional evidence was sent to the tenant via registered mail on September 17, 2021. I noted that the address appearing on the registered mail receipt of September 17, 2021 was different than the rental unit address.

The landlord's agents confirmed the tenant moved out of the rental unit on September 9, 2021 and the address appearing on the registered mail receipt of September 17, 2021 is the address of the tenant's current residence. The landlord's agent testified that

she personally drove the tenant and her possessions to that address on September 9, 2021. A search of the registered mail tracking number showed that the registered mail sent on September 17, 2021 was not picked up by the tenant.

Section 89(1) provides that where a landlord uses registered mail to serve hearing documents to a tenant, the address for service must be the tenant's forwarding address provided by the tenant or the tenant's address of residence at the time of mailing. I am satisfied the landlord used the tenant's address of residence at the time of mailing on September 17, 2021. Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90, I deemed the tenant to be in receipt of the Amendment and the additional evidence. Accordingly, I permitted the Application for Dispute Resolution to be amended and I admitted the additional evidence for consideration in making this decision.

Since the landlord testified the tenant has already moved out of the rental unit, the landlord's agents confirmed the landlord no longer requires an order of Possession and the outstanding issues are monetary only. Accordingly, I did not consider the landlord's request for an Order of Possession further and I do not provide one with this decision.

During the hearing, the landlord requested withdrawal, with liberty to reapply, of its claims for damage to the rental unit as the repairs are still on-going and all of the invoices/receipts have not yet been obtained. Given the lack of participation on part of the tenant in this proceeding, I saw no prejudice to the tenant and I granted the landlord's request. Accordingly, the landlord's claim for damage to the rental unit is dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, as amended?
2. Is the landlord entitled to recovery of cleaning/packing costs?
3. Award of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy started on July 1, 2019 and the tenant was required to pay rent of \$1200.00 on the first day of every month. The landlord collected a security deposit for \$600.00 and a pet damage deposit of \$100.00.

On June 2, 2021 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on the door of the rental unit indicating rent of \$1200.00 was outstanding and \$1334.95 in rental arrears was outstanding. Question concerning service of all three pages of the 10 Day Notice was the reason the landlord's original Application for Dispute Resolution was set for a participatory hearing.

Included in the additional evidence provided with the Amendment was a copy of the tenant's ledger. The ledger shows a balance of rent owing of \$2284.95 on June 2, 2021, comprised of \$1200.00 in rent for June 2021 and \$1084.95 in rental arrears. The ledger also shows a payment of \$1200.00 was entered on June 9, 2021 with a notation of "(05-6/21)", leaving a balance owing of \$1084.95 outstanding as of June 9, 2021. The landlord's Direct Request Worksheet reflects that the landlord received the \$1200.00 payment on June 7, 2021, not June 9, 2021.

The landlord's agent testified that after serving the tenant with the 10 Day Notice and the proceeding notices, the tenant promised to vacate the rental unit by August 31, 2021; however, the tenant did not do so. Nor did the tenant pay any rent for July 2021 or August 2021.

The landlord's agent testified that on September 9, 2021 the landlord went to the rental unit to determine the tenant's progress in moving out. The landlord offered to help the tenant pack and move her possessions to which the tenant agreed she wanted help. The landlord proceeded to contact a company that provides cleaning and packing services. The company arrived on September 9, 2021 and proceeded to pack the tenant's possessions into boxes and cleaned the kitchen. The landlord's agent and her brother then moved the tenant and her possessions to the tenant's new residence in their own vehicle.

On September 9, 2021 the tenant authorized the landlord to retain her security deposit and pet damage deposit, in writing, for the removal of the tenant's furnishings and possessions from the rental unit.

The landlord was of the position the rental unit was not re-rentable in the condition it was left. After the tenant moved out the landlord obtained some verbal estimates with respect to having the carpet replaced, the walls and repainted and other repairs made. The landlord's agent testified that the repairs are on-going and the unit remains vacant as of the date of this hearing, although the landlord's agent stated she intends to move into the rental unit in the coming days.

The landlord applied for recovery of unpaid rent and/loss of rent from the tenant by way of the Amendment, as follows:

Outstanding arrears as of June 2021	\$1084.95
July 2021	1200.00
August 2021	1200.00
September 2021	<u>1200.00</u>
	\$4684.95

In addition, the landlord had requested recovery of the \$200.00 paid to the cleaners/packers by way of the Amendment although the landlord's agent acknowledged that this bill was recovered already by way of the tenant signing over her security deposit and pet damage deposit to the landlord.

Documentary evidence for this proceeding included a copy of: the tenancy agreement; two pages of a 10 Day Notice; proof of service of the 10 Day Notice; the tenant's ledger; the tenant's authorization for the landlord to retain her deposits; an invoice for the cleaning/packing that took place on September 9, 2021; and a move-out inspection report prepared by the landlord's agent alone on September 10, 2021.

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. The Act provides very limited and specific circumstances when a tenant may make deductions or withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent, authorization has been given by the landlord or an Arbitrator, or where the tenant has made emergency repairs to the property under section 33 of the Act.

Upon review of the tenancy agreement, I find the tenant was required to pay rent of \$1200.00 on the first day of every month. I was not provided any evidence to suggest the tenant had a lawful right to make deductions or withhold rent from the landlord.

I make no finding as to whether the landlord served all three pages of a 10 Day Notice that was otherwise valid and enforceable as it is unnecessary for me to do so. Rather, I find the tenancy came to an end on September 9, 2021 under section 44(1)(d) when the tenant vacated the rental unit.

Upon review of the ledger, and the absence of any evidence to the contrary, I accept that the tenant owed the landlord \$1084.95 in outstanding rent for months up to and including June 2021. I further accept the unopposed evidence before me that the tenant occupied the rental unit through to September 9, 2021 without paying rent or for her occupation of the rental unit for the months of July 2021, August 2021 or September 2021. Therefore, I grant the landlords request for recovery of unpaid and/or loss of rent in the amount requested of \$4684.95.

As for the landlord's claim for recovery of the cleaning/packing invoice of \$200.00, I find this cost has already been recovered by the landlord upon review of the tenant's authorization for the landlord to retain her deposits and the landlord's acknowledgement of such. Therefore, I do not award the \$200.00 by way of this decision.

The landlord's application had merit and I award the landlord recovery of the \$100.00 filing fee.

In keeping with all of the above, I provide the landlord with a Monetary Order in the sum of \$4784.95 [calculated as \$4684.95 in rent plus \$100.00 for the filing fee] to serve and enforce upon the tenant.

Conclusion

The landlord is provided a Monetary Order in the amount of \$4784.95 to serve and enforce upon the tenant.

The landlord's claim for damage to the rental unit is dismissed with leave to reapply.

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: October 13, 2021

Residential Tenancy Branch