



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR-DR, MNR-DR, MNDCT, LAT, OLC, CNR, RR

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued in July 2021 and other remedies including authorization to change the locks, to obtain orders for compliance, authorization to reduce rent payable; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement. The landlords filed an application seeking an Order of Possession and Monetary Order with respect to a 10 Day Notice to End Tenancy for Unpaid Rent issued in October 2021.

Both the landlords and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant stated her lawyer was unavailable to participate in the hearing until after the end of the month and the tenant requested the proceeding be delayed. The tenant did not produce any evidence to corroborate her lawyer, if she had retained one, was unavailable for the hearing and I did not further consider granting an adjournment.

Both parties confirmed that the tenant has already returned possession of the rental unit to the landlords. As the tenancy has already ended, I informed the parties that most of the remedies they sought on their respective applications are moot at this time, except for their respective monetary claims.

I explored service of hearing materials upon each other.

The tenant testified that she served the landlords with her proceeding package and her evidence by posting the package on the door of their residence on July 31, 2021. The landlords stated they did not receive a package from the tenant and they only learned of the tenant's application when they contacted the Residential Tenancy Branch.

Where a party makes a monetary claim against the other, they are required to serve the other party in a manner that complies with section 89(1) of the Act. Posting an Application for Dispute Resolution and other required documents on a door is not a permissible method for service under section 89(1) of the Act. Therefore, I found the tenant failed to sufficiently serve the landlords and I dismissed her monetary claim with leave to reapply.

As for the landlord's proceeding package and evidence, the landlords submitted that they sent their proceeding package to the tenant at the rental unit address on October 22, 2021 via registered mail and they sent additional evidence to the tenant at her forwarding address via registered mail on November 1, 2021. The landlords provided registered mail receipts, including tracking numbers, as proof of service.

The tenant stated she did not receive the packages from the landlords. The tenant testified that she had moved out of the rental unit on October 4, 2021 and that the last time she had checked the mailbox associated to the rental unit was on July 31, 2021 as she misplaced her key for the mailbox after checking her mailbox on that date. The landlords stated the tenant moved out slowly throughout the month of October 2021, and did not finish removing all of possessions, including her TV, until October 31, 2021, and the landlord opened the tenant's locked mailbox for her on October 31, 2021. The tenant then changed her testimony to acknowledge the last time she checked her mailbox was on October 31, 2021.

A search of the registered mail tracking numbers show that the registered mail sent on October 22, 2021 resulted in Canada Post leaving a notice card in the mailbox on October 25, 2021 and the registered mail was delivered on November 1, 2021. I note the tenant's service address was the rental unit address on her Application for Dispute Resolution and I was satisfied the landlords met their obligation to serve the tenant in a manner that complies with section 89(1). The tenant also acknowledged accessing her mailbox for mail sent to the rental unit address on October 31, 2021 and Canada Post shows the registered mail was delivered on November 1, 2021. As such, I informed the parties that I would continue to hear the landlord's monetary claim for unpaid rent.

As for the landlord's evidence package, a search of the registered mail tracking numbers shows the registered mail sent on November 1, 2021 was delivered at 9:01 a.m. on November 18, 2021. Where a party sends evidence by mail, it is deemed to be received five days later pursuant to section 90 of the Act. An applicant's evidence is to be received by the respondent no less than 14 clear days before the hearing date. I find that sending evidence to the tenant by mail on November 1, 2021 does not afford sufficient time for mailing and 14 clear days before the hearing and the landlord's evidence package sent on November 1, 2021 was late.

With a view to ensuring fairness and the tenant's statement she did not receive the landlord's application or evidence; I informed the parties that I would take their verbal testimony as evidence so that both parties would have an opportunity to respond to the evidence against them.

On another matter, the tenant was instructed and cautioned multiple time to cease interrupting the proceeding, speaking out of turn, and speaking over me. The tenant was informed that further interruptions and outbursts would result in her exclusion from the hearing. The tenant failed to abide by my instructions and I informed her that I was excluding her from the proceeding. The tenant refused to hang up so I disconnected the tenant's telephone connection. The tenant called back into the hearing after a few minutes. I permitted the tenant to remain in the hearing as her conduct improved after she had been disconnected.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The tenant attempted several times to introduce evidence, orally, that was irrelevant to the matter at hand. I informed the tenant several times that her monetary claim would not be heard today but that she may reapply to have her claim heard.

During the hearing, the landlords requested authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I amended the landlord's application to reflect this request as it is non-prejudicial to the tenant since the security deposit shall be used as an offset to any award to the landlords.

Issue(s) to be Decided

1. Are the landlords entitled to compensation for unpaid rent?
2. Are the landlords authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The landlords testified that the tenancy started on July 1, 2020. The tenant testified the tenancy was supposed to start on July 1, 2020 but it did not actually start until July 11, 2020.

The landlords testified that the tenant paid a security deposit of \$650.00 and the tenant was required to pay rent of \$1300.00 on the first day of every month under the tenancy agreement. The tenant confirmed this to be accurate.

The landlords testified that on July 29, 2021 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") with an effective date of October 31, 2021 as they had sold the property and the purchasers requested the notice be given to the tenant. The tenant testified that she received a letter from the realtor giving her until October 31, 2021 to vacate but that it was not a proper Two Month Notice.

The landlord submitted that for the months of July 2021, and August 2021 the tenant paid a portion of the monthly rent as the landlords had authorized the tenant to make deductions for monies they agreed to compensate the tenant for hydro and damaged furniture. The tenant was of the position she was entitled to more compensation for hydro and furniture than that the landlords have given her. I informed the tenant she may make such a claim by filing another Application for Dispute Resolution.

The landlords testified that the tenant did not pay any rent for September 2021 or October 2021 but they are seeking compensation for only one month since the tenant is entitled to receive compensation equivalent to one month's rent for receiving the Two Month Notice. As such, the landlords are seeking to recover \$1300.00 for October 2021.

The tenant testified that she withheld rent for September 2021 because the landlords authorized her to do so as compensation for her damaged furniture. The landlords were

of the position they had already compensated the tenant for the damaged furniture and they did not authorize further deductions for damaged furniture. The tenant stated she had evidence of the landlord's authorization in text messages. I instructed the tenant to read those text messages that provide the landlord's authorization aloud. The tenant read from text messages but they did not pertain to authorization to withhold rent for September 2021 for damaged furniture or in any specific amount.

The landlords were of the position the tenancy ended on October 31, 2021 when the tenant finished removing all of her possessions and she returned the keys to them. The tenant testified she removed her possessions on October 4, 2021 and she returned the keys on October 31, 2021 because the landlords were unavailable to receive the keys before then. The landlords stated the tenant removed her possessions on various dates in October 2021, as captured on the security camera and that the last of her possession were not removed until October 31, 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 withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent in a prior month, authorization has been given by the landlord or an Arbitrator, where the tenant has made emergency repairs to the property under section 33 of the Act, or compensation payable for receiving a Two Month Notice.

In this case, is it undisputed that the tenant did not pay any rent for September 2021 or October 2021 and she held possession of the rental unit into October 2021.

The tenant was of the position she had authorization from the landlord to withhold the rent payment for September 2021 as compensation for damaged furniture. I find the tenant's disputed oral testimony that she was also authorized to withhold rent for September 2021 due to damaged furniture was not sufficiently proven by the tenant and I make no offset to the landlords' rent claim for damaged furniture. Rather, if the tenant wishes to pursue her position that the landlords owe her more money for hydro or damaged furniture, she may make another Application for Dispute Resolution.

The landlords were of the position that the tenant was entitled to withhold one month's rent for receiving the Two Month Notice. Although the tenant was of the position that

she was not served with a proper Two Month Notice, the landlords are giving the tenant the compensation that accompanies a Two Month Notice, which is beneficial for the tenant. Therefore, I give the tenant the right to withhold rent for one month as compensation for the tenancy ending for landlord's use of property and I award the landlords recovery of the other month, as claimed.

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

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords in this decision.

In keeping with all of the above, the landlords are provided a Monetary Order in the net amount of \$750.00 [calculated as \$1300.00 + \$100.00 - \$650.00].

Conclusion

The landlords are authorized to retain the tenant's security deposit and the landlords are provided a Monetary Order for the balance of rent owing and the filing fee in the net amount of \$750.00.

The tenant's monetary claim against the landlords 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: November 18, 2021

Residential Tenancy Branch