



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNL, CNL-4M, RP, OLC

Landlord's application: FFL, OPC, OPL, MNRL - S, MNDL

Introduction

This hearing was scheduled to deal with cross applications at 9:30 a.m. on this date, via teleconference call. The tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), orders for repairs and orders for the landlord to comply with the Act, regulations, or tenancy agreement. The landlord applied for an Order of Possession based on the Two Month Notice; and, monetary compensation for unpaid rent, damage, and recovery of the filing fee.

Only the landlord appeared at the hearing, despite leaving the teleconference call open 20 minutes to give the tenant the opportunity to appear. The landlord was affirmed and ordered to not make an audio recording of this proceeding.

The landlord testified that he received the tenant's proceeding package and testified that he served the tenant with his proceeding package, in person to each other, at the same time in October 2021. In the absence of anything to the contrary, I accepted that service occurred in accordance with the Act.

The landlord stated that the tenant has since moved out of the rental unit and he has regained possession of the rental unit. As such, I find the remedies sought by the tenant on her Application for Dispute Resolution are moot as of the date of this hearing. Similarly, the landlord's request for an Order of Possession is also moot and I do not provide an Order of Possession to the landlord with this decision.

The landlord requested that he be authorized to retain the tenant's security deposit in satisfaction of any rent the tenant owes him as he will not be pursuing the tenant for any

amounts in excess of the security deposit. I amended the landlord's application accordingly and I continued to hear the landlord's monetary claim against the tenant.

Issue(s) to be Decided

Has the landlord established that the tenant owes the landlord at least the amount of the security deposit and is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord testified that the tenancy started on September 20, 2020 on a month to month basis. The landlord collected a security deposit of \$450.00 and the monthly rent was set at \$900.00 payable on the first day of every month.

The landlord testified that the tenant failed to pay rent for September 2021 and on September 18, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") with a stated effective date of November 30, 2021. The 2 Month Notice submitted into evidence by the tenant shows only page one and three of the four page notice. The second and fourth page was not visible in the tenant's upload. The landlord provided a copy of page one and two of the 2 Month Notice, but not pages three or four. On the second page of the 2 Month Notice provided by the landlord, the landlord indicates that the reason for ending the tenancy is so that he and/or his spouse by occupy the rental unit and in filing his Application for Dispute Resolution, the landlord indicated that he was seeking to regain possession of the rental unit as he does not want to rent the basement suite any longer and the landlord wants to be free of stress since he is recovering from a transplant transplant.

Also in filing his Application for Dispute Resolution on October 5, 2021, the landlord indicated that rent of \$1800.00 was outstanding for September 2021 and October 2021. The landlord testified during the hearing that the tenant subsequently paid him \$1000.00 that the landlord applied to the outstanding rent for September 2021 and \$100.00 toward rent for October 2021. The landlord did not know the date the tenant made this \$1000.00 payment to him.

The landlord testified that the tenant did not pay him any more rent after making the above-described \$1000.00 payment and on November 2, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$800.00 was outstanding for October 2021 and \$900.00 was outstanding for November 2021.

The landlord testified that the tenant did not pay anything toward the outstanding rent and moved out on November 15, 2021.

Neither party provided with a copy of a written tenancy agreement or a copy of a 10 Day Notice. The details concerning the content of the 10 Day notice were only provided orally to me by the landlord during the hearing.

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.

Although I was not provided a copy of a written tenancy agreement or 10 Day Notice, I note that the landlord's testimony that rent was set at \$900.00 per month and the tenant paid a security deposit is consistent with particulars the tenant provided in filing her Application for Dispute Resolution. Therefore, I accept that the tenant was required to pay rent of \$900.00 on the first day of the month.

In filing his Application for Dispute Resolution, which I have accepted was served upon the tenant, indicates the tenant failed to pay rent for September 2021 and October 2021. The landlord has provided testimony that the tenant did subsequently make a payment of \$1000.00 and I accept that testimony in the absence of any corroborating evidence since it is beneficial to the other party. Therefore, I accept that the tenant failed to pay \$800.00 of the rent that was payable for October 2021.

Where a tenant receives a 2 Month Notice, the tenant is entitled to compensation equivalent to one month of free rent, either by withholding the last month of rent or receiving a refund from the landlord, as provided under sections 51(1) and (1.1). The tenant may also end a tenancy earlier than the effective day of the 2 Month Notice, as provided under section 50 of the Act; however, the tenant is required to give the landlord 10 days of advance written notice to do so and I was not provided any evidence to suggest the tenant gave the landlord such notice. Considering I heard unopposed evidence from the landlord that the tenant remained in possession of the rental unit until November 15, 2021, I find I am satisfied that the tenant owes the landlord rent for October 2021. Therefore, I grant the landlord's request to retain the tenant's security deposit of \$450.00 in satisfaction of unpaid rent.

Conclusion

The landlord is authorized to retain the tenant's security deposit in satisfaction of unpaid rent.

The balance of the remedies sought by the parties are dismissed without 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: February 17, 2022

Residential Tenancy Branch