



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on January 18, 2022 (the “Application”). The Landlords sought the following:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Utilities (and Rent)
- To recover unpaid rent
- To recover the filing fee

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The parties agreed the Tenant moved out of the rental unit prior to the hearing. The Landlord withdrew the request for an Order of Possession.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?

2. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Landlord testified as follows. They purchased the rental unit September 30, 2021, and the Tenant was already living in the rental unit. The tenancy was a month-to-month tenancy. Rent was \$2,500.00 per month due on the first day of each month. The Tenant agreed with these points and testified that they moved into the rental unit March 01, 2020.

The Landlord testified that the Tenant moved out of the rental unit January 23, 2022. The Tenant testified that they moved out January 15, 2022. However, the Tenant testified that they were cleaning the rental unit until January 23rd and gave the keys back to the Landlords on January 23rd.

The Landlord testified that the Tenant owes \$5,000.00 in rent for December of 2021 and January of 2022.

The Tenant agreed they did not pay rent for December of 2021 or January of 2022. The Tenant testified that they were told by realtors involved in the sale of the rental unit that they would get their last month of rent free. The Tenant acknowledged they were not issued a Two Month Notice on the RTB form in relation to the rental unit. The Tenant testified that there was a verbal agreement that they would get one month of free rent.

The Landlord denied that there was an agreement that the Tenant could withhold rent or would get one month of free rent.

Both parties submitted text messages between them.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results...

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

I find the Tenant moved out of the rental unit January 23, 2022, because the Tenant acknowledged they did not give the keys to the rental unit back to the Landlords until this date. The Tenant was responsible for paying rent while they remained in possession of the rental unit, and they remained in possession of the rental unit until the keys were returned to the Landlords.

I find the Tenant failed to pay rent for December of 2021 and January of 2022 because the parties agreed on this.

I do not accept that the Tenant had authority under the *Act* to withhold rent. The Tenant acknowledged they were not issued a Two Month Notice on the RTB form pursuant to section 49 of the *Act*, which is what would have triggered their right to withhold one month of rent. The Landlords were not required to give the Tenant the equivalent of one month of free rent in the absence of issuing a Two Month Notice on the RTB form pursuant to section 49 of the *Act*, regardless of what the Landlords' plan was in relation to the use of the rental unit.

I do not accept that the Landlords, or an agent for the Landlords, agreed to the Tenant withholding rent for December of 2021 or January of 2022. I would expect an agreement about withholding rent to be in writing given the importance of paying rent in a tenancy. In the absence of written evidence to support the testimony of the Tenant that there was a verbal agreement about withholding rent, I am not satisfied there was. Further, all the text messages in evidence tend to show that there was no such agreement between the parties.

I find the Tenant failed to pay rent for two months and did not have authority under the *Act* to withhold rent. I find the Tenant owes the Landlords \$5,000.00. I acknowledge that the Tenant gave up possession of the rental unit January 23, 2022 and I have awarded the Landlords rent for all of January. I do so because rent was due on the first day of each month and therefore the Tenant was to pay the Landlords \$2,500.00 on January 01, 2022. I also do so given how late in the month the Tenant gave back possession of the rental unit.

Given the Landlords have been successful in the Application, they are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant owes the Landlords \$5,100.00 and the Landlords are issued a Monetary Order for this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlords are issued a Monetary Order for \$5,100.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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 17, 2022

Residential Tenancy Branch