



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPL, MNDCL, MNDL, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for landlord's use of property and a Monetary Order for unpaid rent and estimated costs for cleaning and damage.

Both parties appeared for the hearing. The parties were affirmed 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.

At the outset of the hearing, I explored service of hearing materials.

The landlord testified that she sent the proceeding documents and the landlord's evidence to the tenant via registered mail and by posting to the rental unit door. The tenant confirmed she was notified of the proceeding by receiving the proceeding documents by registered mail but denied there was any supporting evidence served upon her.

In hearing from both parties concerning service, I found the landlord's testimony confusing as to what she served and I was unsatisfied the landlord's evidence was served to the tenant. The tenant did not submit any evidence. Accordingly, I proceeded to hear this matter based on verbal testimony of both parties.

During the hearing, the parties reached an agreement with respect to the ending of the tenancy. I have recorded the parties' agreement by way of this decision and the order that accompanies it.

On another procedural matter, the landlord had requested authorization to retain the security deposit in filing the application but during the hearing the landlord requested

that the security deposit remain in trust to be administered in accordance with the Act at a later date since the tenant is still occupying the rental unit. I amended the application accordingly since this request for amendment is non-prejudicial.

The landlord also requested that the monetary claim for unpaid rent be amended to include loss of rent that has been incurred after filing and while waiting for this hearing. The tenant acknowledged that she understood that one of the purposes for this hearing was to hear the matter of unpaid rent. I find the landlord's request for amendment to be reasonably foreseeable and the tenant appeared prepared to address the matter. Accordingly, I permitted this amendment and heard from the parties with respect to unpaid and/or loss of rent for the months of April 2022 through October 2022.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent, cleaning and damage?
3. Award of the filing fee.

Background and Evidence

I heard consistent testimonial evidence that the tenancy started on November 1, 2015 and the tenant paid a security deposit of \$250.00. The tenant was required to pay rent of \$500.00 on the first day of every month.

The parties provided consistent testimony that the landlord had served the tenant with a Two Month notice to End Tenancy for Landlord's Use of Property in March 2022 with a stated effective date of May 31, 2022. The tenant did not file to dispute the 2 Month Notice and has not yet vacated the rental unit. The tenant stated she has been having a very difficult time and only recently secured new living accommodation for the end of the month. During the hearing I was able to facilitate an agreement between the parties as to when the tenant will vacate the rental unit. The parties were in agreement that the tenant shall be permitted occupancy of the rental unit until 1:00 p.m. on October 31, 2022 and the landlord shall be provided an Order of Possession to reflect this date and time.

The landlord seeks recovery of unpaid rent for the months of April 2022 through to October 2022, or \$3500.00.

The tenant acknowledged that rent was not paid for the month of April 2022, June 2022, September 2022 and October 2022 and she owes the landlord rent in the sum of \$2000.00. The tenant argued that she was entitled to withhold rent for May 2022 for receiving the 2 Month Notice. The tenant testified she paid rent for July 2022 and August 2022 by sliding cash under the door of the landlord's residence after the landlord requested it of her by text message. The tenant claims that she had a witness present when she slid the cash under the landlord's door but that her witness was unavailable to attend the hearing.

The landlord denied receiving cash from the tenant for July 2022 or August 2022 and even checked under the front door mat during the hearing to ensure there was no cash there. The landlord acknowledged that in the past, when the tenant paid rent, there would be an exchange of text messages but that the tenant did not pay for July 2022 or August 2022 and did not text the landlord that she had left a payment for the months of July 2022 or August 2022. The tenant responded that she forgot to send a text to the landlord after putting the cash under the landlord's door in July 2022 and August 2022.

In making this Application for Dispute Resolution the landlord had also requested compensation for the estimated cost to clean and rectify damage in the rental unit. The tenant responded that these claims were premature since the tenant is still living in the rental unit and she is undertaking efforts to clean and make any necessary repairs before she has to vacate. I was also in agreement that the landlord's claims for cleaning and repairs were premature since the tenant is still occupying the rental unit and I did not hear these claims further.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing that the tenant shall have until 1:00 p.m. on October 31, 2022 to vacate the rental unit and the tenancy ended because of a 2 Month Notice. In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 1:00 p.m. on October 31, 2022.

With respect to unpaid and/or loss of rent, the tenant acknowledges that she owes the landlord rent or monies for use and occupancy for the months of April 2022, June 2022,

September 2022 and October 2022. Therefore, I award the landlord recovery of unpaid and/or loss of rent for those months.

As for the month of May 2022, the tenant argued that she withheld the rent as she was entitled to do so for receiving the 2 Month Notice. Section 51(1) of the Act provides that a tenant in receipt of a 2 Month Notice is entitled to compensation equivalent to one month's rent. Section 51(1.1) of the Act provides that the tenant is permitted to receive the compensation by withholding last month's rent. The tenancy was set to end May 31, 2022 pursuant to an undisputed 2 Month Notice and I find the tenant was entitled to withhold rent for May 2022. Therefore, I deny the landlord's request for recovery of unpaid rent for May 2022.

As for the months of July 2022 and August 2022, the tenant was still occupying the rental unit even though the tenancy had already ended. As such, I find the landlord entitled to claim against the tenant for overholding pursuant to section 57(3) of the Act. The tenant claims to have paid the rent for these months but the landlord denies receiving it. Since it is very difficult to prove a negative, I find the tenant has the burden to prove she gave the landlord rent for these months. The tenant claims she had a witness when she slid cash under the landlord's door in July 2022 and August 2022 but the tenant's witness did not attend the hearing. Nor, did the tenant have the witness provide a sworn affidavit. The tenant did not provide evidence to show she withdrew cash from a bank or otherwise show where she obtained the cash she allegedly slid under the landlord's door. As such, I find the tenant did not persuade me that she paid rent or monies for use and occupancy for the months of July 2022 and August 2022 as she claimed. Therefore, I award the landlord loss of rent for the months of July 2022 and August 2022.

In keeping with the above, I find the landlord entitled to recovery of unpaid and overholding for the months of April 2022 through October 2022, less one month which the tenant is entitled to withhold for receiving a 2 Month Notice. As such, I award the landlord a sum of \$3000.00 (\$500.00 x 7 months less 1 month).

As for the landlord's claims for estimated cleaning and damage costs, I find those claims premature since the tenant is still holding possession of the rental unit. As such, I find it reasonable to afford the tenant until 1:00 p.m. on October 31, 2022 to clean and make any necessary repairs. As such, the landlords claim for cleaning and damage is dismissed with leave to reapply.

Since the landlord was successful in this Application for Dispute Resolution, I award the landlord recovery of the \$100.00 filing fee from the tenant. The landlord is provided a Monetary Order in the total sum of \$3100.00.

The security deposit remains in trust for the tenant to be administered in accordance with the Act after the tenancy ends.

Conclusion

The landlord is provided an order of Possession effective at 1:00 p.m. on October 31, 2022.

The landlord is provided a Monetary Order in the amount of \$3100.00 for unpaid and overholding, and recovery of the filing fee.

The landlord's claims for cleaning and damage costs are dismissed with leave to reapply.

The security deposit remains in trust to be administered in accordance with the Act after the tenancy ends.

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 17, 2022

Residential Tenancy Branch