



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to deal with cross applications. The tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The landlords filed an application seeking an Order of Possession and Monetary order for unpaid rent.

Tenant JF appeared for the hearing, as did three of the four landlords who own the property. The parties were affirmed.

Preliminary and Procedural Matters

I explored service of hearing materials and determined the following.

The tenant testified that she named the two landlords and sent the proceeding packages to the two landlords identified on the 10 Day Notice she received. The tenant had uploaded a copy of a registered mail receipt, that included two tracking numbers. A search of the tracking numbers showed two registered mail packages being sent on August 26, 2022 and delivered on August 30, 2022. Landlord BM confirmed the packages came to his house. The other landlords appearing before me, stated they were not served.

When I look at the 10 Day Notice and the tenancy agreement, I see that the landlords neglected to provide their service address to the tenants in the space provided on these forms, as is required under sections 13 and 52 of the Act. Nevertheless, BM confirmed receiving the tenant's proceeding package. There is another landlord identified on the tenant's Application for Dispute Resolution but that person is not named on the 10 Day Notice or the tenancy agreement. Therefore, I am satisfied that landlord BM has standing as a landlord and was served so I leave him as a named landlord and I

exclude the other landlord named by the tenant as it is not clear that person has standing as a landlord.

I also further amended the tenant's application to exclude the name of the co-tenant, referred to by initials TF. I heard that TF is the tenant's ex-spouse from whom she separated from and TF moved out of the rental unit on July 11, 2022, following alleged domestic abuse. As such, I am unsatisfied the tenant had authority to act on TF's behalf in filing the tenant's Application for Dispute Resolution.

In light of the above, the tenant's application is amended to name herself and landlord BM.

As for the landlord's application, the landlords confirmed they did not serve either of the named tenants, explaining they did not have an address at which to serve them as the tenants had already vacated when their proceeding package was ready to be served. Therefore, I dismissed the landlord's application due to lack of service.

The tenant confirmed that she and her son vacated the rental unit in the latter part of August 2022 and the landlords regained possession of the rental unit at the end of August. The landlords confirmed they regained possession of the rental unit on August 28, 2022.

As explained to the parties, I may grant an Order of Possession and/or a Monetary Order for unpaid rent to a landlord under a tenant's application to dispute a 10 Day Notice. This is provided under section 55(1) and (1.1) of the Act, which states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and

(b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Having confirmed the landlords have already regained possession of the rental unit, an Order of Possession was no longer required and I do not need to provide one with this decision. Both parties confirmed that they understood the purpose of this proceeding was to deal with the unpaid rent.

I proceeded to explain the hearing process to the parties and gave the parties the opportunity to ask questions about the process.

Issue(s) to be Decided

Does the tenant owe the landlord rent, and if so, how much?

Does the tenant have grounds to withhold rent from the landlord?

Background and Evidence

The tenancy started in June 2021 and the landlords collected a security deposit of \$1375.00. The monthly rent of \$2750.00 was payable on the first day of every month.

The tenant paid one-half of the rent for June 2022.

The tenant did not pay rent for July 2022 and the landlord issued a 10 Day Notice indicating rent of \$4125.00 was outstanding (\$1375.00 for June 2022 and \$2750.00 for July 2022). The tenant filed to dispute the 10 Day Notice.

The tenant did not pay rent for August 2022 and the tenant moved out on August 18, 2022 and her adult son moved out on August 21, 2022. The landlords regained possession of the rental unit on August 28, 2022.

The tenant claims that one of the landlords agreed the security deposit may be applied toward the unpaid rent for June 2022. The tenant also asserted that she understood from what TF told her that the landlord had agreed to give the tenants two free months of rent at the end of their tenancy for enduring the flooding of November 2021 and the work the tenants did to suck up the water that was flowing into the rental unit and remove the wet carpets. The tenant acknowledged that she did not know which landlord TF allegedly made this agreement.

During the hearing, the landlords were agreeable to retaining the security deposit in partial satisfaction of the unpaid rent. The landlords also stated they were unaware of any flooding in the rental unit during the atmospheric river of November 2021 and there was no agreement that the tenants may withhold their last two months of rent. Rather, the landlords claim they only heard of damage in the rental unit in August 2022 when TF called them to report the unit was damaged.

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 where a tenant may legally withhold rent.

Where a tenant does not pay rent, the landlord is at liberty to issue a 10 Day Notice to the tenant. Since the tenant filed to dispute the 10 Day Notice, the enforceability of the 10 Day Notice was suspended, pending the outcome of the hearing. In such cases, the tenant will be held responsible for paying rent until a decision is made with respect to the validity of the 10 Day Notice, or the date the tenant returns possession of the rental unit to the landlord, whichever date is sooner. The landlords regained possession of the rental unit on August 28, 2022 and I hold the tenant liable for paying rent up to and including the month of August 2022.

Both parties were in agreement as the amount of the monthly rent and the payments that had been received from the tenant in the last three months of occupancy (June, July and August 2022). The dispute surrounds the tenant's entitlement to apply the security deposit to the outstanding rent for June 2022 and whether the landlords waived entitlement to receive rent for July 2022 and August 2022, as the tenant asserted.

The tenant asserts the landlord agreed to keep the security deposit in satisfaction of the unpaid rent for June 2022. While the landlords did not specifically acknowledge that during the hearing, the landlords did confirm they wish to retain the security deposit to be applied toward unpaid rent. Therefore, I authorize the landlords to do so and I consider the dispute over June's unpaid rent to be resolved by retention of the security deposit.

As for rent for the months of July 2022 and August 2022, the tenant asserts the landlords waived their entitlement to rent as compensation to the tenants for the flooding that occurred in November 2021. Where a tenant is of the position the tenant has the legal right to withhold rent, the burden shifts to the tenant to demonstrate such a right.

The landlords denied agreeing to waive rent. The tenant is relying upon oral hearsay of a person who is not at the hearing and I find that is insufficient to prove the landlord's waived their entitlement to receive rent from the tenant for the months she occupied the rental unit.

In light of the above, I award the landlord recovery unpaid rent and a Monetary Order under section 55(1.1) of the Act, calculated as follows:

Unpaid rent – June 2022	\$1375.00
Less: security deposit	(1375.00)
Unpaid rent – July 2022	2750.00
Unpaid rent – August 2022	<u>2750.00</u>
Monetary Order for landlord	\$5500.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and the landlord is provided a Monetary Order for the balance of rent owing the sum of \$5500.00 pursuant to section 55(1.1) of the Act.

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: January 06, 2023

Residential Tenancy Branch