



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, OPR, MNRL – S, FFL

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 and authorization to reduce rent payable. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and had the opportunity to be 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 documents upon each other. The tenant stated he did not serve the landlord(s) with his hearing package and the landlord confirmed that to be accurate. Initially, the tenant stated he thought the Residential Tenancy Branch would do that for him. I informed the tenant that was not correct and that parties are required to serve their hearing package upon the respondent. I noted that the Residential Tenancy Branch records reflect that on March 14, 2019 a voice mail was left for the tenant to instruct him to pick up the hearing package and serve the landlord by a particular date. The tenant responded by saying he did not receive that message. Out of an abundance of fairness to the tenant, I informed the parties that I would still consider whether the tenant had grounds for cancellation of the 10 Day Notice. As for the tenant's request for a reduction of rent payable, I informed the parties that I would dismiss any monetary claim he may have against the landlord(s) with leave to reapply.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

2. Are the landlords entitled to an Order of Possession for unpaid rent?
3. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent as requested?
4. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The following facts were undisputed: The tenancy started on November 1, 2018 and the landlords collected a security deposit of \$750.00. The rent was set at \$1,500.00 payable on the first day of every month. The tenant eventually paid rent for November 2018 and December 2018 in the amount of \$1,500.00 for each month, albeit late. Since January 2019 the tenant has not paid any rent to the landlords except for \$400.00 on March 1, 2019. On March 8, 2019 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$3,350.00 was outstanding as of March 1, 2019. After serving the 10 Day Notice to the tenant no payment was received from the tenant and the tenant continues to occupy the rental unit.

According to the landlord, the tenant was having a difficult time coming up with the monthly rent and the landlords agreed to reduce the monthly rent starting January 2019 to \$1,250.00 after discussions with the tenant. The landlords calculated the outstanding rent that appears on the 10 Day Notice as: \$1,250.00 for the three months of January, February and March 2019, less the \$400.00 payment received on March 1, 2019.

According to the tenant there was no agreement reached between the parties to reduce the monthly rent so the monthly rent remained at \$1,500.00. The tenant provided various reasons why he did not pay rent after December 2018, including the presence of silverfish, lack of repairs being made to the property, and a very high hydro bill due to there being a basement suite and a sump pump running. The tenant confirmed that he did not make any repairs to the property.

The tenant indicated he is preparing to move out but did not have a specific date set for doing so as he is still looking for alternative accommodation. The landlord requested an Order of Possession effective as soon as possible considering rent has not been paid for several months already and the landlords have lost thousands of dollars.

The landlords requested compensation in the sum of \$5,850.00 which was calculated as \$1,250.00 for each of the months of January 2019 through May 2019, less the

\$400.00 payment received on March 1, 2019. The landlords seek authorization to retain the tenant's security deposit in partial satisfaction of this sum.

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 specific and limited circumstances when a tenant may lawfully withhold rent from the landlord which are: overpayment of a security or pet damage deposit; the tenant paid an unlawful rent increase in the past; the tenant paid and has given a receipt for emergency repairs that meet the criteria of section 33 of the Act; the tenant had the landlord agreed the tenant may make deductions from rent; or, the tenant had obtained the authority of the Director of the Residential Tenancy Branch to make deductions or withhold rent.

The tenant did not establish a lawful right for withholding the rent under one of the specific provisions I described above. While the tenant may have suffered some loss due to the conditions of the property or a high hydro bill, the tenant's remedy is to seek monetary compensation against the tenant. The tenant does not have the right to withhold rent first and then try to get authorization after the fact and this is supported by section 26 of the Act.

Where a tenant does not pay rent that is due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. In this case, the tenant did not pay the outstanding rent indicated on the 10 Day Notice at any time. The tenant filed to dispute the 10 Day Notice and although he did not serve it upon the landlord, I have considered whether he established a basis for cancellation of the Notice. As explained above, I have found that the tenant did not have a lawful right to withhold rent from the landlords. Therefore, I do not cancel 10 Day Notice and I find this tenancy is at an end due to unpaid rent.

Having found the tenancy has ended due to unpaid rent and the tenancy continues to occupy the rental unit, I find the landlords entitled to an Order of Possession to regain possession of the rental unit. Considering several months of rent have not been paid, I provide the landlords an Order of Possession effective two (2) days after service upon the tenant.

While the parties were in dispute as to whether they mutually agreed to reduce rent to \$1,250.00 per month starting in January 2019, I find the landlords' request for a Monetary Order in the lesser amount of \$1,250.00 per month for five months is less than what they may have legally sought and I grant the landlords' request to recover unpaid and/or loss of rent in the amount claimed of \$5,850.00. I further award the landlords recovery of the \$100.00 filing fee they paid for their application.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlords.

In light of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, in the net amount of \$5,200.00 [calculated as \$5,850.00 + \$100.00 - \$750.00].

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order in the net amount of \$5,200.00 to serve and enforce upon the tenant.

The tenant's request for monetary compensation 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: May 03, 2019

Residential Tenancy Branch