



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Hudson Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, MNDC, FF
For the landlord: MNSD, MNR, OPR, FF

Introduction

This hearing dealt with cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a monetary order, and for recovery of the filing fee.

The landlord applied for a monetary order for unpaid rent and for other compensation owe, for an order of possession for the rental unit due to unpaid rent, and to recover the filing fee for the application.

The tenant, the owner, and the landlord’s agent appeared at the hearing, the hearing process was explained and each party was given the opportunity to ask questions about the hearing process.

Thereafter each party was given the opportunity to present their evidence orally, to refer to documentary evidence, and to make further submissions.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue- The Rules require that each party submitting evidence serve the Residential Tenancy Branch and the other party duplicate copies of the same evidence. The landlord said that her evidence was not served to the tenant. I therefore have excluded the landlord’s evidence from consideration; however the landlord was allowed to submit oral evidence surrounding their written evidence.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice, to monetary compensation and to recover the filing fee?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on June 1, 2013, the monthly rental obligation is \$950, and that the tenant paid a security deposit of \$475 at the beginning of the tenancy.

In addition to seeking cancellation of a Notice to the end the tenancy, the tenant also claimed compensation of \$500 without being specific as to what comprised this claim.

In addition to seeking enforcement of a Notice to end the tenancy, the landlord had a monetary claim of \$1900, without providing a detailed calculation of the claim as required under section 59(2)(b) of the *Act* and the application. The only explanation provided in the "Details of the Dispute" portion of the landlord's application, where a detailed calculation is to be placed, the landlord said that the tenant did not pay rent for July 2013.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice on the door on July 8, 2013. The effective move out date listed on the Notice was July 18, 2013. As section 90 of the *Act* states that documents delivered by posting on the door are deemed three days later, the tenant was deemed to have received the Notice on July 11, and section 53 states that the effective move out date of the Notice is changed to July 21.

The Notice listed unpaid rent of \$950 as of July 1, 2013.

The landlord submitted that since the issuance of the Notice, the tenant did not make a payment of rent in July and paid just \$475 for August.

Thereafter the parties were deeply divided as to the rent payment for July and whether it was paid. The tenant said that shortly after he wrote the rent cheque for July, he was informed by his bank that that the cheque would be dishonoured; the tenant then text messaged the landlord's agent on July 4 and informed him that he had the July rent in cash ready to give the landlord, according to the tenant.

The tenant further submitted that he informed the landlord's agent that he was not sure if he would be around to pay the agent the cash, as he and his son had tentative plans to go camping that weekend.

According to the tenant, he was then informed by the landlord's agent that he could put his payment under a door on the main level of the building when the tenant's weekend

camping plans were confirmed. I note that the residential property is a 21 unit apartment building, on 4 floors.

The tenant submitted that he did not know which door to put his payment under, so he inquired of a long term tenant, and was directed to slide the envelope under the door of what was later discovered to be the supply closet, after hours on that Friday night, July 4.

The landlord's agent confirmed that he and the tenant had a phone conversation, in which the tenant said that he had cash for the July rent and that he, the tenant, could give the payment to anyone. At this point, the landlord's agent read a text message he received from the tenant on this date, which stated, "I can meet you at the building, I can give you cash."

The landlord's agent then testified that he had no confirmation that the rent payment would be in cash and would not have instructed the tenant to leave cash under a door.

According to the landlord, she received a call from her agent the next day, who informed her that the door to the supply closet was open, as he was informed by another tenant.

The landlord immediately attended the property, discovering that the supply closet door was open; however, the landlord contended that the envelope was not there and that nothing was taken from the closet.

The landlord further stated that it was quite ironic that after all these years of owning the building and having no break-ins, that suddenly the supply closet door was open and an alleged cash payment was taken.

In response to my question, the landlord confirmed that there is no office on the residential premises, and there is no drop box for payments of rent after hours. The landlord explained that either she or her agent collects the rent payments from tenants, and if a cash payment is given, the tenant is issued a receipt.

The tenant agreed that he made a partial payment of rent for August, in the amount of \$475, as he had an agreement with the landlord that he was vacating the rental unit by the end of August and that the landlord would retain the tenant's security deposit. The tenant said that he was now unable to move as his new rental unit was no longer available.

Analysis

Landlord's Application:

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent pursuant to section 46(1) of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five

days. In this case, there is a dispute as to whether the tenant made his July rent payment on July 4, which I note is prior to the issuance of the Notice on July 8, 2013.

I find that it is not a simple case of “no receipt evidence of a cash payment of rent-no payment made.”

The tenant contended, which was undisputed by the landlord or agent, that when he learned the bank would dishonour his rent cheque for July, he immediately contacted the landlord to arrange a cash payment on July 4. The landlord in turn contended that the cash payment was never received, and that when they received notice the following week that the cheque was being dishonoured, the tenant was given a Notice.

In the case before me, I find on the balance of probabilities that the tenant did make his monthly rent payment for July in cash on July 4, 2013. In reaching this conclusion, I considered that the tenant provided clear and consistent testimony of his efforts in being proactive in making contact with the landlord's agent in order to make a cash payment. There was no dispute that the tenant and the landlord's agent had numerous communications regarding the payment on this date, and in fact, I find that the landlord's agent contradicted himself when he said that he did not know that the rent payment was to be in cash, and then, when reading from the tenant's text message, the tenant said that his rent payment was in cash.

I also relied on the fact that there was no dispute that the tenant was informed to leave his payment under a door, yet there are no office doors or drop boxes on the premises for a tenant to make after hour payments. The landlord stated that they collected rent payments from the tenants, yet I would find that this suggests that a tenant would not be allowed to make a rent payment beyond the working day hours and therefore were no other way to make a payment.

Also I relied on the landlord's confirmation that the supply closet door was open when she went in the next day, on July 5, a Saturday, but I do not accept her explanation that as nothing was taken, in other words, cleaning supplies, that the envelope with cash was never there.

I find that the landlord's agent was well aware that the tenant intended to pay his rent in cash, on July 4, offered to meet someone at the building to pay the cash, and was then informed by the landlord's agent to leave his payment under a door, without being specific as to which door, as neither the landlord nor her agent were still on the premises.

I therefore find the tenant provided more credible testimony that he did make his July rent payment, and that there was no other way to make a payment to the landlord other than to leave it under a door.

Due to this, I find it more likely than not that the tenant paid his July rent, and that when the landlord issued the Notice on July 8, 2013, the tenant did not owe rent for July. I

therefore find that the Notice was invalid when it was issued, and I cancel the Notice of July 8, 2013, with the effect that this tenancy continues until it may otherwise end under the Act.

As the tenant has not made a full rent payment for August, the landlord is at liberty to issue the tenant another Notice to deal with the issue of unpaid rent for August.

As I have cancelled the Notice, I do not award the landlord recovery of \$950 for unpaid rent for July and dismiss that portion of their application, without leave to reapply.

As to the balance of the landlord's monetary claim, which I would assume is a request for unpaid rent for August, as this is an issue which may be dealt with at a later date, depending on whether another Notice is issued, I dismiss this portion of the landlord's application, with leave to reapply.

I do not award the landlord recovery of the filing fee.

Tenant's application-

As I have cancelled the Notice, I grant the tenant's application seeking cancellation of the Notice.

I dismiss the tenant's request for a monetary order for \$500, as the tenant failed to provide any evidence to support this claim and further, did not explain what comprised his request for compensation.

As the tenant's application seeking cancellation of the Notice was successful, I allow the tenant recovery of the filing fee of \$50.

The tenant is allowed to withhold \$50 from any future rent payment as a onetime deduction, in the event the tenancy continues. If the tenancy does not continue, the tenant is awarded a monetary order in the amount of \$50.

Conclusion

The landlord's application seeking an order of possession for the rental unit and a monetary order for the July 2013 rent of \$950 is dismissed.

The landlord's application seeking compensation for August rent, if such was the case, is dismissed, with leave to reapply.

The tenant's application seeking cancellation of the Notice is granted.

The portion of the tenant's application seeking monetary compensation is dismissed.

The tenant is granted recovery of the filing fee of \$50 and he is granted a monetary order in that amount.

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*.

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Dated: August 16, 2013

Residential Tenancy Branch

