



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent, loss of rent and unpaid utilities; and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I noted the tenant identified herself using a different last name than that appearing on the tenants' Application. The tenant explained that she filed the Application using her maiden name but she now uses her married name. The landlord had filed his Application indicating a second last name for the female tenant in brackets. The last names used by the landlord for the female tenant are the same as the names used by the tenant. Therefore, I amended the Applications to identify the tenant using her married name as well as her maiden name.

The landlord confirmed receipt of the tenants' Application; however, the tenant claimed that she did not receive the landlord's Application. The tenant testified that she received two registered mail packages from the landlord, one for her and one for her husband, and that the packages included evidence only. The landlord had provided four registered mail receipts as evidence, including tracking numbers. The landlord testified that he sent a hearing package, including the Application, to each tenant on June 13, 2015 and two evidence packages, one to each tenant, on July 2, 2015. A search of the registered mail tracking numbers showed that all four of the registered mail packages were successfully delivered on June 22, 2015 and on July 17, 2015 and a signature of the female tenant was viewable for each of the registered mail packages. In light of this evidence, I accepted the landlord's submission that the tenants were served with the

landlord's hearing package, including the landlord's Application, and his evidence. The tenant also acknowledged that she understood that the nature of this dispute concerned the enforcement of the 10 Day Notice that the tenants filed to dispute and the payment of rent. Out of an abundance of caution, I reviewed the landlord's monetary claim with her in detail.

At the outset of the hearing the tenant acknowledged that the tenants had not provided any documentary evidence to the Branch except for a copy of the 10 Day Notice that is the subject of this dispute. The tenant requested an adjournment as she stated she was still waiting for the bank to provide the results of an investigation into where an e-transfer payment made on June 2, 2014 was sent. The tenant acknowledged that she did not supply a copy of her June 2015 bank statement as evidence with the explanation that it does not show where the funds were sent. Nor, did the tenant provide a copy of an email showing that an electronic payment was sent or accepted by another party on June 2, 2014 or documentation from the bank indicating they were investigating the loss of funds sent by the tenant on June 2, 2014.

I made the decision to deny the tenant's request for adjournment under Rule 6.4 which provides the criteria I must apply in considering a request for adjournment. I found that to grant an adjournment would be inappropriate upon considering paragraphs d) and e) of Rule 6.4 in particular.

Paragraph d) provides that I must consider the following in deciding to grant an adjournment:

d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

Given the tenants' failure to provide any documentary evidence to demonstrate an e-transfer payment was made in the amount of \$1,400.00 on June 2, 2014 and that the bank was investigating whether the payment was sent to someone other than the landlord in error I found the tenant's request for adjournment attributable to the tenants' own neglect to submit relevant supporting evidence. I find it reasonable to expect the tenants would have provided a copy of their bank statement, copies of email confirmation that an e-transfer was sent and accepted; and, correspondence with the bank that an investigation was underway; yet, none of those materials were provided.

Paragraph e) of Rule 6.4 provides that I must consider the following in granting an adjournment:

e) the possible prejudice to each party

Given the alleged e-transfer was made nearly two months ago and the tenant is still not in receipt of evidence from the bank that would demonstrate the tenants attempted to pay rent to the landlord on June 2, 2014 and the landlord's position that the tenants have not paid rent for two months and continue to occupy the rental unit I was of the position that to grant an adjournment would be prejudicial to the landlord and that to do so would likely cause him greater losses.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to recover unpaid and/or loss of rent for the months of June and July 2015?
3. Is the landlord entitled to recover unpaid utilities from the tenants?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The parties entered into a one-year fixed term tenancy agreement on January 20, 2015 for a tenancy set to commenced February 1, 2015. The tenants moved into the rental unit on January 24, 2015. The tenants were required to pay a security deposit of \$700.00 and rent of \$1,400.00 on the 1st day of every month.

The tenants attempted to pay the security deposit three times by way of a cheque. The three cheques were returned by the tenant's bank. The tenant's rent cheque for the month of February 2014 was also returned by the tenant's bank. The landlord submitted evidence showing the cheques were returned for insufficient funds; however, the tenant claimed it was due to fraud and the bank account being "de-activated".

The security deposit was eventually paid by way of an e-transfer made on February 10, 2015. The rent for February 2014 was eventually paid by way of a \$1,000.00 e-transfer on February 13, 2015 and the balance of the rent due was paid by way of a cash payment made on March 1, 2015. For the month of March 2015 the rent was paid by way of four partial payments throughout the month (one cash payment and three e-transfers). The rent for April was paid by way of two partial payments using e-transfers and the rent for May was made by way of three partial payments using e-transfers. The tenant explained that the multiple partial payments had to be made as the amount of money available for an e-transfer was limited.

For the month of June 2015 the landlord submitted that no rent payment was received. The tenant submitted that a single \$1,400.00 payment was sent via e-transfer on June 2, 2015. The tenant testified that she has requested the bank investigate where the funds were sent but that the bank has yet to provide her with that information. The tenant did not provide a copy of her bank statement showing a payment of \$1,400.00 on June 2, 2015. The tenant did not provide copies of emails that would confirm the funds were sent electronically and received by another party. The tenant did not provide copies of any correspondence she had with the bank with respect to any investigation.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 2, 2015. The Notice indicates rent of \$1,400.00 was outstanding for June 2015 as well as utilities of \$290.80 that were demanded in writing on June 1, 2015. The landlord testified that the 10 Day Notice was posted on the door of the rental unit on June 2, 2015 and he provided photographs showing the Notice being taped to a door.

The tenant submitted that the 10 Day Notice was posted on the door on the day she filed her Application, which was June 9, 2015. The tenant was of the position that the 10 Day Notice should be cancelled as a \$1,400.00 e-transfer had been made on June 2, 2015.

With respect to the request for utilities, the landlord explained that the electricity account is in the tenant's name; however, the City sent the landlord a letter advising him that their electricity account was in arrears and in that jurisdiction a tenant's failure to pay utilities will result in the debt being transferred to the landlord. The landlord acknowledged that he has not yet been billed by the City for utilities related to the tenant's account. The landlord did state that he spoke with the tenants about the situation and their response was they had not received any electricity bills. The tenant testified that a payment has been made for electricity; however, the tenant acknowledged that a balance remains payable.

The landlord also requests recovery of loss of rent for the month of July 2015 as he claims the tenants have not paid any monies for the month of July 2015 and continue to live in the rental unit.

The tenant claimed that she sent a \$1,400.00 e-transfer to the landlord on July 1, 2015 and that he refused to accept it. The tenant claims she had an e-mail to demonstrate that but it was not provided as evidence. The landlord responded by stating the tenant attempted to send him an e-transfer for only \$10.00 on July 20, 2015 and that he rejected that.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. It is undisputed that the tenants are required to pay rent of \$1,400.00 on the 1st day of every month pursuant to their tenancy agreement.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Upon receiving a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case, the landlord submitted the 10 Day Notice was posted on the rental unit door on June 2, 2015 and the tenant claims that it was received on June 9, 2015. In either circumstance, I am satisfied the tenants filed to dispute the Notice within the time limit for doing so. Where a document is posted on the door of a rental unit it is deemed to be received by the tenant three days later under section 90 of the Act. Thus, posting a 10 Day Notice on the door on June 2, 2015 would give the tenant up until June 10, 2015 to file to dispute it. In filing to dispute the Notice on June 9, 2015 the tenants were within the time limit for doing so whether it was posted on June 2, 2015 or received on June 9, 2015.

Where a tenant files to dispute a 10 Day Notice on the basis the tenant has paid the rent the tenant bears the burden to prove the rent was paid. In filing their Application, the tenants provide the following position in their details of dispute: "Was paid by e-transfer waiting for bank to put trace." The tenants do not indicate what was paid, the amount paid, and to whom it was paid. However, it is presumable that they are referring to rent for June 2014 payable to the landlord in the amount of June 2015 since that was required of them by virtue of their tenancy agreement and as indicated on the 10 Day Notice they seek to dispute. Therefore, the tenants bear the burden to prove the rent was paid for June 2015 in the amount of \$1,400.00 to the landlord.

The tenants have not provided any documentary evidence to demonstrate that they made an e-transfer to the landlord in the amount of \$1,400.00 for the month of June 2015. Even if the bank's investigation is not complete; I find that by exercising due diligence the tenants could have and should have provide other evidence such as: a copy of the bank statement showing \$1,400.00 left their bank account on June 2, 2015 by e-transfer as the tenant claimed; the email confirmation the e-transfer was sent and confirmation that the funds were accepted by another party; and, correspondence with

the bank or confirmation from the bank that the bank had received a request to investigate the transfer.

I also found the tenant's verbal testimony that a single \$1,400.00 payment was sent via e-transfer in itself to be unreliable given: her testimony concerning receipt of two registered mail packages from the landlord with respect to this dispute to be contradicted by results of a search of the registered mail tracking numbers; her own testimony that multiple smaller partial rent payments had to be made due to limitations on the amount she may transfer at one time; and, considering the payment history during this relatively short tenancy that shows the tenants had bounced several cheques to the landlord and never fulfilled their obligation to pay rent in full and on time.

In light of the above, I find the tenants did not meet their burden to prove they paid the rent for June 2015 to the landlord. Therefore, I dismiss their Application.

Having dismissed the tenants' Application, I uphold the Notice and find that the tenancy has ended for unpaid rent 10 days after the 10 Day Notice was received by the tenants. Since the tenancy has already ended and the tenants are still in possession of the rental unit I grant the landlord's request for an Order of Possession. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

With respect to the landlord's monetary claims against the tenants, I award the landlord unpaid rent for June 2015 as I am satisfied the landlord has not received the rent for June 2015. I also award the landlord loss of rent for the month of July 2015 since the tenants continue to occupy the rental unit and I was not persuaded by the tenant's disputed testimony that an attempt was made to pay rent of \$1,400.00 on July 1, 2015; but, in any event, the tenant acknowledged that a transfer attempted in July 2015 was not accepted by the landlord. Therefore, he has not received any monies for the month of July 2015 from the tenants.

I have made no award to the landlord for unpaid utilities as the landlord has not demonstrated that he has suffered such a loss as of this date. Therefore, I grant the landlord leave to reapply should he suffer a loss associated to the tenants' failure to pay their electricity account to the City.

The landlord is further awarded recovery of the \$50.00 filing fee paid for this Application.

I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows

Unpaid Rent: June 2015	\$ 1,400.00
Loss of Rent: July 2015	1,400.00
Filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$ 2,150.00

To enforce the Monetary Order, it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court as necessary.

Conclusion

The tenants' Application to cancel a 10 Day Notice has been dismissed and the landlord's request for an Order of Possession has been granted. The landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$2,150.00 to serve upon the tenants and enforce as necessary.

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: July 29, 2015

Residential Tenancy Branch

