



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELLWOOD HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MT, CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the tenant **and** an application by the landlord.

The tenant filed pursuant to the *Residential Tenancy Act* (the Act) on February 15, 2016 for Orders as follows:

1. Allow the tenant more time to make an application to cancel a Notice to End Tenancy – Section 66; and, if granted,
2. To cancel a 10 Day Notice to End for unpaid rent - Section 46

The landlord filed pursuant to the Act on February 18, 2016 for Orders as follows:

1. An Order of Possession for unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their limited submissions of evidence and testimony. The tenant advised they are still residing in the rental unit. The parties were given opportunity to turn their minds to compromise and arrive at an agreed settlement to their dispute, to no avail.

Issue(s) to be Decided

Should the tenant be allowed more time to dispute a Notice to End?

Should the Notice to End Tenancy for unpaid rent be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The undisputed evidence is that, in the least, a verbal tenancy agreement exists between the parties as of March 2015. Rent in the amount of \$700.00 was originally agreed payable by the tenant in advance on the first day of each month. The tenant agrees that on February 05, 2016 they received a 10 day Notice to End tenancy for unpaid rent dated the same date stating they owed \$630.00 in unpaid rent. The tenant had 5 days to dispute the Notice to End and according to Section 46 of the act was required to do so no later than February 10, 2016. The tenant testified that they did not file for dispute resolution to dispute the Notice to End until later as they were in midst of discussion and dispute with the landlord over the payment of the rent, given that the landlord's demand for rent was \$200.00 per month more than originally agreed. None the less, the tenant did not determine to dispute the Notice to End until the permitted time to do so elapsed and now applies for more time to dispute the Notice. The landlord acknowledged they had arbitrarily raised the rent in 2015 by \$200.00 to \$900.00. Once informed they had not raised the rent in accordance with the Act – resulting in an overpayment by the tenant, the landlord acknowledged they had not given the tenant a valid 10 Day Notice to End and that on calculation they likely owed *the tenant* \$400.00.

The tenant agreed with the landlord they paid \$270.00 toward February 2016 rent and had not paid March and April 2016 rent. The landlord disagreed with the tenant's assertion they paid an additional \$300.00 of rent in February 2016, and neither party provided evidence in support of their version of events.

Analysis

Sections 46 and 66 of the Act, in relevant part, state as follows;

Landlord's notice: non-payment of rent

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

66 (1) The director may extend a time limit established by this Act only in *exceptional circumstances*, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

In this matter, given the landlord's acknowledgement they gave the tenant an illegal 10 Day Notice to End I find it would be a miscarriage of natural justice if the tenant's application was refused on the basis they did not file their application within the prescribed period. As a result, I find the circumstances warrant consideration of the tenant's application disputing the landlord's Notice to End. I therefore extend the tenant's time to file their application disputing the Notice to End to the date they filed their application.

I find the tenant bore the burden of proving they paid the landlord rent of \$300.00 in February 2016 and they did not do so. I accept that the only rent paid for February 2016 was the agreed amount of \$270.00 – with the balance of \$430.00 still owing.

I find the landlord did not give the tenant a valid Notice to End as the landlord in fact owes the tenant \$400.00 in rent overpayment at the time they issued the tenant their Notice to End. As a result, I find the landlord is not entitled to an Order of Possession with the landlord's Notice to End the tenancy effectively **cancelled** and of no effect. The landlord is at liberty to serve the tenant with a new *valid* Notice to End.

It must be known that the evidence is that the rent going forward for this rental unit is \$700.00 per month until the landlord provides the tenant with a valid Rent Increase, or the parties enter into a new tenancy agreement for a different amount.

In respect to the monetary claims made in this matter, the parties agree the tenant owes rent for March and April 2016 in the amount of \$1400.00. I find the tenant was owed \$400.00 by the landlord prior to receiving the Notice to End in February 2016 – reducing the tenant's arrears for February 2016 from \$430.00 to \$30.00. I find the landlord is

owed the sum of outstanding rent in the amount of \$1430.00 and is further entitled to recover their filing fee of \$100.00 for a total award of **\$1530.00**.

Conclusion

The tenant's application is granted and the tenancy continues as originally agreed.

The payable monthly rent currently remains as \$700.00.

I grant the landlord a Monetary Order under Section 67 of the Act for the amount of **\$1530.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: April 06, 2016

Residential Tenancy Branch