



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HFBC HOUSING FOUNDATION
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR, MNR

Introduction

On June 5, 2017 a non-participatory hearing took place to determine an Application for Direct Request (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Adjudicator who had conduct of the non-participatory hearing rendered a written Decision on June 5, 2017. The Adjudicator issued the Landlord with an Order of Possession to end the tenancy because the Tenant had: (a) failed to dispute the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”) served to the Tenant on May 9, 2017; and (b) failed to pay the full amount of rent **within** five days of receiving the 10 Day Notice.

The Adjudicator also determined that the amount of rent payable in this tenancy was \$705.00. As a result, the Adjudicator only granted the Landlord’s monetary claim for \$315.00 for unpaid rent in the form of a Monetary Order issued to the Landlord. The Direct Request Decision and the orders were dated June 5, 2017.

On June 9, 2017, the Tenant applied for a review of the Direct Request Decision on the basis that it was obtained by the Landlord using fraud. In a Review Consideration Decision dated June 22, 2017, the Arbitrator who had conduct of the Tenant’s review application determined that the Tenant was not entitled to a review of the Order of Possession because the Tenant had not disputed the 10 Day Notice.

However, the reviewing Arbitrator was satisfied by the Tenant’s invoice evidence of payments he had made for May 2017. Therefore, the Decision and Monetary Order were suspended pending the outcome of this review hearing, which was granted only to review the Monetary Order pursuant to the reviewing Arbitrator’s findings as follows:

“Section 79 of the Act provides that a decision or order may be reviewed where a party has evidence that the decision or order was obtained by fraud. As the Tenant did not provide any evidence to indicate that the 10 day notice to end tenancy was disputed and as the order of possession was granted on the basis that this notice was not disputed, I find that the Tenant has not provided evidence of fraud in relation to this order. Given the Tenant’s evidence of receipts issued for the payment of May 2017 rent, considering that this evidence was not provided by the Landlord to the RTB for the determination of a monetary order for unpaid rent and given the issuance of a monetary order for unpaid May 2017 rent I find that the Tenant has provided evidence that the Landlord obtained a monetary order for an amount of rent that was paid. The Tenant is therefore entitled to a review of the Decision and monetary order solely on the Landlord’s claim for unpaid rent. I suspend this part of the Decision and the monetary order dated June 5, 2017 pending the outcome of the review hearing.”

[Reproduced as written]

The parties were sent a copy of the Review Consideration Decision by the Residential Tenancy Branch (RTB) to both the Landlord and the Tenant. The Tenant was requested in that Review Consideration Decision to serve the Landlord with notice of this review hearing and a copy of the Tenant’s evidence of the May 2017 rent payments he made.

Preliminary Issues

Two agents for the Landlord and the Tenant appeared for this review hearing and provided affirmed testimony. The hearing process was explained and no questions were asked of as to how the proceedings would be conducted. Both parties were given a full opportunity to present evidence and make submissions to me on the issue of the Monetary Order

The Landlord’s agent testified that she had not received any documents for this hearing from the Tenant and had to find this information out from the RTB. The Tenant testified that the documents were sent by the RTB to the rental unit address which he had already been evicted from by the court bailiffs. The Tenant testified that he had got the information for this hearing from the RTB.

As both parties appeared for the hearing and were ready to proceed, I continued with the review hearing and deferred my decision to consider an adjournment of the review hearing if service of the documents became an issue.

The Landlord's agent testified that it was only after they had filed the Application on May 25, 2017 seeking to end the tenancy, did the Tenant render payment of \$410.00 on May 29, 2017. The Landlord's agent testified that the payment was accepted and therefore there was no requirement for the Monetary Order and neither was the Landlord seeking to enforce the Monetary Order. As a result, the Landlord's agent withdrew the monetary claim.

The Landlord's agent also explained that the Tenant had provided an additional payment on May 30, 2017 for \$580.00. The Landlord's agent testified that while they had accepted the cheque for this amount from the Tenant and issued him with a receipt for it, the Landlord did not and has no intention of cashing it as they do not want to re-instate the tenancy.

The Landlord's agent testified that accordingly, they proceeded to enforce the Order of Possession through the Supreme Court on June 16, 2017 and the Tenant was evicted by the court bailiffs on June 21, 2017. The Landlord's agent confirmed that they are not going to cash the Tenant's rent cheque of \$580.00 even though the Tenant would be liable for June 2017 rent. The Landlord's agent requested an address from the Tenant during the hearing for the return of that cheque.

The Tenant spent most of the hearing putting forward arguments that he had paid the rent in this tenancy and therefore he should not have been evicted. The Tenant asserted several times that he wants to get back into the rental unit.

I attempted several times during the hearing to explain to the Tenant that I did not have any legal authority to order the Tenant back into the rental unit or force the Landlord to voluntarily allow him back in and continue the tenancy. This was because the matter of the Order of Possession was not before me and had already proceeded through the Supreme Court. However, I did attempt to explain several times to the Tenant in the hearing that his failure to pay **full rent on May 1, 2017** in the amount of \$705.00 and his failure to dispute the 10 Day Notice was what led to the ending of the tenancy. I also attempted to inform the Tenant that payment of rent the day after it is due (May 1, 2017) **or** after the five day time period has expired on a 10 Day Notice, does not automatically re-instate a tenancy or cancel an Order of Possession.

However, the Tenant was unable to understand this concept. The Tenant stated that he had nowhere to go and therefore was unable to provide a forwarding address to the Landlord for the return of his cheque. The Tenant also requested the return of his furniture which he stated was at the rental unit. The Landlord's agent confirmed that the

court bailiffs had seized the Tenant's personal property and had provided the Tenant with a contact card for the retrieval of it.

Accordingly, I informed the Tenant that he may contact the Supreme Court for details of how to retrieve his personal property. The Tenant is also cautioned to cancel the rent cheque he provided to the Landlord on May 30, 2017. However, if the Landlord is provided with a forwarding address, the Landlord must return the Tenant's cheque to that address and use that address for the return of the Tenant's security deposit.

I also encourage the Tenant to obtain advocacy services to help him fully understand this decision process that has taken place thus far as the Tenant struggled to do so in this review hearing.

Conclusion

The Landlord withdrew the monetary claim. Section 82(3) of the Act provides that following a review hearing, the original decision or order may be confirmed, varied or set aside.

Based on the foregoing, the Landlord's Monetary Order for \$315.00 dated June 5, 2017 is now set aside and is of no force or effect. The portion of the June 5, 2017 Decision dealing with the Landlord's monetary claim is also set aside and amended with this Review Hearing Decision. This file is now closed.

This Review Hearing Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 31, 2017

Residential Tenancy Branch