



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, ERP, FFT, LRE, MNDCT, OLC, PSF, RR, OPR, MNRL, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy (the "10 Day Notice") pursuant to section 46;
- disputation of a rent increase from the landlord, pursuant to section 41;
- an Order for emergency repairs, pursuant to section 62;
- repayment of the filing fee pursuant to section 72;
- restriction or suspension of the landlord's right to enter, pursuant to section 70;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for the landlord to comply with the *Act*, regulation, and/ or the tenancy agreement;
- an Order for the landlord to provide services or facilities required by the tenancy agreement or law; and
- an Order to reduce the rent for repairs, services or facilities agreed upon but not provided.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to sections 26, 67 and 72; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issues and Findings

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

Issue(s) to be Decided

1. Is the tenant entitled to have the 10 Day Notice cancelled, pursuant to section 46 of the *Act*?
2. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
3. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26, 67 and 72 of the *Act*?
4. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. The rental property has two suites, one upper and one lower. This tenancy began on April 1, 2016 in the upper suite with a monthly rent of \$1,500.00. A written tenancy agreement was signed by both parties but a copy was not submitted for these applications. In late November 2017 the tenants moved to the lower suite. A new tenancy agreement was not entered into for this new tenancy.

Landlord K.S. (the "landlord") testified that the new rental agreement was that the tenants would pay \$1000.00 per month for the months of December 2017 and January 2018 but that starting February 2018, the rent would increase to \$1,200.00

Tenant M.N. (the “tenant”) testified that the new rental agreement was that rent was \$1,000 per month and that there was no agreement that rent would increase to \$1,200.00 per month in February 2018.

The landlord testified that the tenants did not pay rent on May 1, 2018 when it was due. On May 18, 2018 the landlord’s agent served a 10 Day Notice to End Tenancy for unpaid rent with an effective date of June 1, 2018 (the “10 Day Notice”) on the tenants via registered mail. The landlord’s agent provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the 10 Day Notice.

The tenant testified that he paid rent in cash on May 1, 2018 and was surprised to receive the 10 Day Notice.

Both parties agree that the tenant paid \$1,000.00 in rent on June 5, 2018.

The landlord testified that she has not received any money for July 2018 rent. The tenant testified that he recently sent the landlord a money order in the amount of \$1,000.00 for July 2018’s rent.

The tenant testified that he always paid rent in cash and was never provided with a receipt except for the June 5, 2018 payment. The landlord testified that she always provided the tenant with receipts. The only receipt uploaded was the June 5, 2018 receipt. The landlord did not upload a rent ledger or other support for rent receipt for the duration of either the first or second tenancy.

Analysis

The landlord’s agent testified that she served the tenants the 10 Day Notice by registered mail on May 18, 2018. The landlord’s agent provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the 10 Day Notice. I find that the tenant was deemed served with the 10 Day Notice on May 23, 2018, five days after its mailing, in accordance with section 88 of the *Act*.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. The landlord is claiming the following:

Item	Amount
May 2018 Rent	\$1,200.00
June 2018 Rent	\$200.00
July 2018 Rent	\$1,200.00
Filing Fee	\$100.00
TOTAL	\$2,700.00

The landlord and the tenant gave conflicting evidence regarding the amount of rent payable each month and for which months rent was paid. The burden of proving that rent was \$1,200.00 and that \$1,000.00 was not paid in cash on May 1, 2018, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that both parties will be able to produce a receipt for every cash payment that has allegedly been made. If receipts have been provided, as alleged by the landlord, then the landlord should have provided them into evidence.

When a tenant has previously made cash payments and has never been provided with a receipt, as alleged by the tenant, there is no expectation that the tenant can provide a receipt for such a payment.

In this case, the landlord's failure to submit into evidence receipts for cash payments made during this tenancy significantly impairs her ability to prove that the tenant did not pay a portion of rent. In addition, the landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate her claim that the tenant did not pay \$1,000.00 in cash on May 1, 2018.

As noted above, as the landlord is claiming unpaid rent for May, June and July 2018, the onus is on the landlord to prove what the rental rate is. I find that the landlord has failed to prove that rent was \$1,200.00 per month. I find that the landlord has failed to prove that \$1,000.00 was not paid on May 1, 2018. Since I am not satisfied that the tenant failed to pay the rent that was due on May 1, 2018, I find that the 10 Day Notice is of no force or effect.

I find that the landlord has not proved a loss of rental income for May and June 2018. The tenant testified that he has sent the landlord a money order in the amount of \$1,000.00 for July 2018's rent. I find that if the landlord is entitled to \$1,000.00 for July 2018's rent.

Since the landlord is mostly unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee for her application.

Since the tenant is successful in his application, I find that he is entitled to recover the \$100.00 filing fee for his application. Section 72(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to withhold \$100.00 from August 2018's rent.

Conclusion

I issue a monetary Order in the landlords' favour in the amount of \$1000.00 for July 2018's rent, against the tenants. The Monetary Order is only to be used if the tenants have not paid July 2018's rent in the amount of \$1,000.00.

The landlords are provided with a monetary order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I Order that the tenants are entitled to withhold \$100.00 of rent for the month of August 2018 in satisfaction of their monetary claim against the landlords.

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 06, 2018

Residential Tenancy Branch