



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, OPC, OPU (Landlord)
CNC, FFT, OLC (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application June 4, 2018 (the “Tenants’ Application”). The Tenants disputed a One Month Notice to End Tenancy for Cause dated May 24, 2018 (the “One Month Notice”). The Tenants also applied for an order that the Landlords comply with the *Residential Tenancy Act* (the “Act”), *Residential Tenancy Regulation* (the “Regulations”) or the tenancy agreement. The Tenants sought reimbursement for the filing fee.

The Tenants filed an amendment to the Tenants’ Application on July 12, 2018 (the “Tenants’ Amendment”). The Tenants’ Amendment related to a monetary claim of \$717.00.

The Landlords filed their application June 15, 2018 (the “Landlords’ Application”). The Landlords applied for compensation for damage caused to the unit and to keep the security deposit. The Landlords also applied for an Order of Possession based on the One Month Notice. The Landlords requested reimbursement for the filing fee.

The Landlords filed an amendment to the Application on June 21, 2018 (the “Landlords’ Amendment”). The Landlords’ Amendment related to a request for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served June 13, 2018 (the “10 Day Notice”). The Landlords also requested \$693.80 compensation for unpaid rent and utilities.

The Tenant appeared at the hearing and appeared for Tenant K.C. The Landlords appeared at the hearing with S.R. to assist them. The Landlords had three witnesses call into the hearing. These witnesses were asked to exit the conference call until required and did so. The witnesses were not required for the hearing.

I told the Tenant I would not consider his request for an order that the Landlords comply with the *Act*, *Regulations* or tenancy agreement as this seemed to relate to the issue of the notices to end tenancy and whether the tenancy would continue which would be determined by the dispute of the One Month Notice. This aspect of the Tenants' Application is dismissed without leave to re-apply.

Rule 2.3 of the Rules of Procedure (the "Rules") states that claims made in an Application for Dispute Resolution must be related to each other and that arbitrators may dismiss unrelated claims with or without leave to reapply.

I told the Tenant I would not consider the Tenants' Amendment as it did not relate to the main issue before me, the One Month Notice. The Tenant is free to re-apply for the monetary compensation claimed within the time limits set out in the *Act*.

I told the Landlords I would not consider their request for compensation or to hold the security deposit and explained that this application is premature. This aspect of the Landlords' Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

I asked the Landlords if they were seeking an Order of Possession based on the 10 Day Notice and \$693.80 for unpaid rent and utilities. S.R. said the outstanding rent and utilities had been paid so the Landlords were no longer proceeding with this request.

I explained the hearing process to the parties who did not have questions when asked. All parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlords confirmed they received the hearing package for the Tenants' Application and the Tenants' evidence. S.R. said the evidence was received late but that the Landlords were prepared to proceed. S.R. said the Landlords did not receive photos submitted by the Tenants. The Tenant said he served some of the photos on the Landlords; however, he was unable to point to evidence to support this. I excluded the photos pursuant to rule 3.17 of the Rules given the conflicting evidence and lack of evidence to support the Tenant's position.

The Tenant confirmed he received the hearing package for the Landlords' Application and the Landlords' evidence. The Tenant later confirmed he received a copy of the Landlords' Amendment.

After hearing from the parties about the tenancy agreement, I raised the issue of the Landlords' Amendment. I noted that the Landlords had requested an Order of Possession based on the 10 Day Notice and had submitted materials indicating the Tenant did not pay the outstanding rent within the time limit set out in the *Act*. I noted that the Tenant had not disputed the 10 Day Notice. I asked S.R. and the Landlords for their position on the 10 Day Notice and why the Landlords were not proceeding with the request in the Landlords' Amendment. I had concerns about proceeding to hear from the parties on the One Month Notice, and possibly cancelling the One Month Notice and allowing the tenancy to continue, when the materials submitted to me seemed to indicate that the tenancy was already ended under section 46(5) of the *Act*.

I heard from S.R. about the Landlords' position on the 10 Day Notice and asked if the Landlords wanted me to hear from the parties on the 10 Day Notice. S.R. indicated that the Landlords did want me to do so if the 10 Day Notice could be considered. S.R. said that if the Landlords had to choose between seeking an Order of Possession based on the 10 Day Notice or One Month Notice, they would seek it on the One Month Notice. I advised the parties that the Landlords did not have to choose, I could hear from the parties on both but that if an Order of Possession issued based on the 10 Day Notice the One Month Notice is no longer an issue. I proceeded to hear the parties on the issue of the 10 Day Notice.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlords and Tenants regarding the rental unit. The tenancy started February 1, 2018 and is for a fixed term of one year ending February 1, 2019. Both parties agreed rent is \$1,250.00 per month due on the first of each month.

A security deposit of \$650.00 was paid. The agreement is signed by the Landlords and Tenants.

The 10 Day Notice is addressed to the Tenant. It indicates he failed to pay \$1,250.00 in rent due June 1, 2018. It refers to the rental unit. It is signed and dated June 13, 2018 by the Landlords and has an effective date of June 23, 2018.

The parties agreed Landlord K.G. served the 10 Day Notice on the Tenant personally on June 13, 2018.

The Landlords testified as follows. On June 11, 2018, the Tenant's rent cheque bounced due to insufficient funds. The 10 Day Notice was served June 13, 2018. The Tenant paid \$750.00 of the rent in cash on June 18, 2018. The Landlords received a cheque for \$500.00 but it was post-dated for June 22, 2018. The Landlords could not cash this cheque because there were additions not initialled by the Tenant. The bank teller also told them it could not be cashed due to insufficient funds. On June 30, 2018, the Tenant left \$500.00 cash in his mailbox for the Landlords to come pick up. The full rent for June was not paid until June 30, 2018.

The Tenant testified as follows. The dates provided by the Landlords are correct. He tried to pay the rent within the five days but could only pay \$750.00. He failed to initial the change on the subsequent cheque. The second payment of \$500.00 was made June 30, 2018. He questioned the validity of the 10 Day Notice as it was only addressed to him and not both Tenants.

Both parties agreed the Tenant did not dispute the 10 Day Notice. Both parties agreed the Tenant did not have authority under the *Act* to withhold rent.

Both parties agreed the Tenant paid rent after the 10 Day Notice was issued. There is no evidence before me that the Tenant was issued receipts that indicate the payments were for use and occupancy only. I asked for the positions of the parties on whether these payments reinstated the tenancy.

I note that during the hearing, S.R. did say that she did not think it was clearly indicated to the Tenant that the Landlords were pursuing an Order of Possession based on the 10 Day Notice. However, she also said the Landlords did not tell the Tenant that they would not seek an Order of Possession based on the 10 Day Notice. S.R. also took the position that the payments made subsequent to the 10 Day Notice being issued did not invalidate it.

The Tenant said he did not understand that the Landlords still wanted him to vacate the rental unit based on the 10 Day Notice. I understood him to say that he thought paying the rent would invalidate the 10 Day Notice. I asked if the Landlords did or said anything to lead him to believe they no longer wanted him to vacate the rental unit based on the 10 Day Notice. He said the Landlords did not pursue having him leave and did not tell him he had to go. He further pointed out the Landlords accepted July rent. He also said it had been over a month since the 10 Day Notice was issued. The Tenant said he thought he had fulfilled his obligations under the 10 Day Notice. The Tenant agreed the Landlords did not say the tenancy was reinstated.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

...

There is no issue that the Tenants were obligated to pay rent in the amount of \$1,250.00 by June 1, 2018. Both parties agreed the Tenant did not have authority under the *Act* to withhold rent. Therefore, I find the Tenants were required to pay \$1,250.00 rent by June 1, 2018 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

There is no issue that the Tenants failed to pay \$1,250.00 rent by June 1, 2018. Given the Tenants failed to pay rent as required, the Landlords were entitled to serve him with the 10 Day Notice pursuant to section 46(1) of the *Act*. There is no issue that Landlord K.G. served the 10 Day Notice on the Tenant personally on June 13, 2018 and therefore that it was served in accordance with section 88(a) of the *Act*.

I have reviewed the 10 Day Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I do not accept the Tenant's argument that the 10 Day Notice is invalid because it is not addressed to both Tenants. The Tenants are co-tenants under one tenancy agreement. If the tenancy ends for one of the Tenants, it ends for both. In these circumstances, I do not find that the 10 Day Notice had to name both Tenants to be valid.

The Tenants had five days from receipt of the Notice to pay or dispute it under section 46(4) of the *Act*. There is no issue that the Tenants did not pay the full amount of rent outstanding within five days of receiving the 10 Day Notice on June 13, 2018. Further, there is no issue that the Tenants did not dispute the 10 Day Notice.

Therefore, pursuant to section 46(5)(a) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended June 23, 2018, the effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by June 13, 2018.

I acknowledge that the Landlords accepted further payments after the 10 Day Notice was issued and that in some circumstances this may reinstate the tenancy. However, in my view, that is not what occurred here. I accept that the Landlords never told or

indicated to the Tenants that the tenancy was reinstated as both parties agreed with this.

I do not accept the arguments of the Tenant in this regard. Whether the Tenant thought that paying the outstanding rent eventually was sufficient or not is irrelevant. The 10 Day Notice clearly states that the Tenants had five days to pay the outstanding rent. I do not accept that the Tenant did not know this. In any event, tenants are expected to know their rights and obligations under the *Act* and not knowing these rights and obligations is not a basis to set aside the 10 Day Notice.

Nor do I accept the argument that the Landlords did not do anything to make him vacate the rental unit. They filed the Landlords' Amendment seeking an Order of Possession based on the 10 Day Notice on June 21, 2018. The Landlords did act to have him vacate the rental unit.

I acknowledge that the Landlords accepted July rent; however, they were entitled to do so as the Tenants were still residing in the rental unit. In my view, for a tenant to be successful in arguing that payments made after the five-day timeline for doing so reinstated the tenancy, they must have solid and persuasive evidence that this occurred. I do not find that the Tenant has presented such evidence here.

I find the Landlords are entitled to an Order of Possession based on the 10 Day Notice. Pursuant to section 55(3) of the *Act*, I grant the Landlords an Order of Possession effective two days after service on the Tenants.

As the Landlords were successful in this application, I grant them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlords are authorized to keep \$100.00 of the security deposit at the end of the tenancy as reimbursement for the filing fee.

I told the parties we would reconvene to hear the dispute of the One Month Notice if necessary. This is not necessary as the tenancy has ended and the One Month Notice is no longer an issue.

Conclusion

The Landlords are entitled to an Order of Possession based on the 10 Day Notice. The Landlords are granted an Order of Possession effective two days after service on the

Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are granted reimbursement for the filing fee and are authorized to keep \$100.00 of the security deposit at the end of the tenancy as reimbursement for the filing fee.

This 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, 2018

Residential Tenancy Branch