Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YORK HOUSE HOLDINGS LTD./FIVE MILE HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL-S, OPR (Landlord)
CNR, DRI, FFT, LRE, MNDCT, OLC, PSF (Tenant and Applicant)

Introduction

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

The Tenant and Applicant filed their application October 5, 2018. The Tenant and Applicant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served October 2, 2018 (the "Notice");
- To dispute a rent increase that is above the amount allowed by law;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For the Landlord to comply with the *Residential Tenancy Act* (the "*Act*"), *Residential Tenancy Regulation* and/or the tenancy agreement;
- For the Landlord to provide services or facilities required by the tenancy agreement or law;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Landlord filed their application October 30, 2018. The Landlord applied as follows:

- For an Order of Possession based on the Notice;
- To recover unpaid rent;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Tenant and Applicant appeared at the hearing. The Building Manager and Property Manager appeared at the hearing for the Landlord. I explained the hearing process to

the parties and answered their questions in this regard. The parties provided affirmed testimony.

Rule 2.3 of the Rules of Procedure (the "Rules") requires matters to be related to each other in an Application for Dispute Resolution. I told the Tenant and Applicant that I would only consider the following:

- The dispute of the Notice;
- The dispute of a rent increase that is above the amount allowed by law; and
- The request for reimbursement for the filing fee.

The following issues are dismissed:

- The request to suspend or set conditions on the Landlord's right to enter the rental unit;
- The request for the Landlord to comply with the *Act*, *Regulations* and/or the tenancy agreement;
- The request for the Landlord to provide services or facilities required by the tenancy agreement or law; and
- The request for compensation for monetary loss or other money owed.

I dismiss the above with leave to re-apply; however, this does not extend any time limits set out in the *Act*.

I will consider the Landlord's application as it is related to the main issue raised by the Tenant and Applicant being the dispute of the Notice.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Building Manager and Property Manager confirmed they received the hearing package and evidence for the Tenant and Applicant's application.

The Tenant and Applicant advised that they did not receive either the hearing package or evidence for the Landlord's application.

An issue arose at the outset of the hearing in relation to who is and is not a tenant in this matter. The Tenant explained that she is the Applicant's mother. The Tenant said

she never lived at the rental unit. The Tenant and Applicant confirmed that the Applicant still lives at the rental unit.

The Tenant testified that the Applicant needed a place to live and that she looked for a place for him. She said she found the rental unit and so signed the tenancy agreement on the understanding that her name would be changed to the Applicant's name at a later date. The Tenant testified that she told the woman who signed the tenancy agreement with her that her son would be living in the rental unit. Both the Tenant and Applicant said the name on the tenancy agreement was never changed.

The Building Manager testified that the Tenant is the only tenant they are aware of in relation to the rental unit. She said the Tenant is the person who applied for the rental unit. The Building Manager testified that the Tenant never mentioned that her son would be living at the rental unit. The Building Manager pointed out that it is the Tenant's name on the tenancy agreement, Condition Inspection Report and application for tenancy. These documents were submitted as evidence. The Building Manager testified that they do not deal with the Applicant in relation to the rental unit and that they do not know him. The Building Manager testified that rent payments come from the Tenant.

The Applicant disputed the testimony of the Building Manager. In this regard, he pointed to a cheque submitted as evidence purporting to show that the Landlord has cashed a cheque from his company. The Applicant also provided a Sole Proprietorship Summary showing he owns the company and that the rental unit address is his address on the Summary. The Applicant testified that the Landlord was previously provided a copy of the Sole Proprietorship Summary which is how they would have known that the cheque came from him. The Applicant testified that rent is paid by both him and the Tenant. The Applicant also submitted documentation showing his name on the utilities account for the rental unit.

The Building Manager testified that she had never seen the Sole Proprietorship Summary until the evidence package was received. The Building Manager pointed out that the invoices received from the city for utilities show the rental unit address but no name.

Policy Guideline 13 addresses the issue of multiple tenants under one tenancy agreement and occupants and states as follows at page one to two:

> A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant…
>
> **Occupants**
>
> Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Section 16 of the *Act* states:

> **Start of rights and obligations under tenancy agreement**
>
> **16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the Tenant is a tenant in relation to the tenancy agreement given she signed the tenancy agreement indicating that she is the tenant. Whether the Tenant ever lived at the rental unit or not is not relevant. There is no evidence before me that the Tenant ever ended the tenancy she created by signing the tenancy agreement. Therefore, the Tenant continues to be bound by the tenancy agreement and has all of the rights and obligations related to the tenancy agreement.

I do not accept that there was an agreement that the name of the tenant on the tenancy agreement would change from the Tenant to the Applicant. The Building Manager denied there was such an agreement. The Tenant and Applicant did not provide any evidence to support their position in this regard.

Nor do I accept that the Landlord has entered into a tenancy agreement with the Applicant or consented to the Applicant being added as a tenant on the tenancy agreement. The Applicant is not listed anywhere on the written tenancy agreement. There is no documentation before me that shows the Landlord entered into a tenancy agreement with the Applicant or allowed the Applicant to be added as a tenant in relation to the written agreement submitted.

The Applicant pointed to a cheque cashed by the Landlord from his company. I note that the Tenant and Applicant have only submitted this one cheque as evidence that the Applicant has paid rent to the Landlord. I note that this cheque is not for the full rent amount but for $27.00. I note that the cheque does not state the Applicant's name anywhere on it, it only states his company's name. I do not accept that the Landlord should have or would have known the company was owned by the Applicant. I do not accept the testimony of the Applicant that he provided a copy of the Sole Proprietorship Summary to the Landlord prior to it being provided as evidence on this hearing as the Summary is dated October 2, 2018, just three days prior to the Tenant and Applicant filing their application. The cheque containing the company's name was issued back in 2016. I do not accept that the cheque supports the position that the Landlord knowingly accepted rent payments from the Applicant.

Nor do I accept that the Landlord should have or would have known that the Applicant is listed on the utilities account with the city. The Applicant did not explain how the Landlord would have been aware of this. The invoices sent to the Landlord from the city in relation to the utilities show an account number but no name.

The Tenant and Applicant have not submitted any other evidence showing correspondence between the Applicant and the Landlord in relation to the rental unit. All correspondence and documentation submitted by the Landlord only includes the Tenant's name.

In the circumstances, I am not satisfied that the Landlord was aware of the Applicant living in the rental unit, had entered into a tenancy agreement with the Applicant or had agreed to adding the Applicant as a tenant on the tenancy agreement. Therefore, I find the Applicant is only an occupant of the rental unit. I find that he has no rights or obligations under the tenancy agreement or the *Act* in relation to the rental unit.

I note that the Applicant provided much of the testimony during the hearing. The Tenant was present for the hearing and indicated that she agreed with the position of the Applicant when asked. I therefore will consider the testimony of the Applicant to be the position of the Tenant as well in relation to the issues raised.

In relation to service, the Building Manager and Property Manager testified as follows. Two packages were sent by registered mail to the rental unit, one on October 31, 2018 and one on November 1, 2018. Both packages were addressed to the Tenant. The October 31, 2018 package contained the Landlord's evidence in relation to the application of the Tenant and Applicant. The November 1, 2018 package had the

hearing package and a second copy of the evidence in it. Both packages were returned indicating the Tenant had moved. The Landlord had submitted Canada Post receipts and photos of the packages.

The Building Manager and Property Manager said the Applicant was not served because they do not know him. They said they believed the Tenant lived at the rental unit and that they were not aware of her living at a different address.

I accept that the Building Manager and Property Manager believed the Tenant lived at the rental unit given my comments and findings above. Further, there is no evidence before me that the Tenant ever provided the Landlord with a different contact address. As well, the rental unit address is the address listed for the Tenant on the application of the Tenant and Applicant. I find the Landlord was entitled to serve the Tenant at the rental unit address in the circumstances. I accept that the Landlord did send the hearing package and evidence to the rental unit by registered mail as this is supported by the evidence submitted. Pursuant to section 71(2)(c) of the *Act*, I find the Tenant was sufficiently served. Pursuant to section 90 of the *Act*, the Tenant is deemed to have received the hearing package and evidence.

As I am satisfied of service, I will proceed to consider the issues noted above as they relate to the Tenant.

I note that the Landlord was not required to serve the Applicant given he is only an occupant in relation to the rental unit and therefore I have not considered or addressed service on the Applicant.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the rent increase above the amount allowable by law?

2. Should the Notice be cancelled?

3. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?

4. Is the Landlord entitled to recover unpaid rent?

5. Is the Landlord entitled to keep the security deposit towards unpaid rent?

6. Is the Tenant entitled to reimbursement for the filing fee?

7. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit. The agreement started December 1, 2015 and was for a fixed term ending November 30, 2016. The tenancy then became a month-to-month tenancy. The Tenant paid a $475.00 security deposit.

Numerous 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were submitted as evidence. The Building Manager asked that I consider the Notice dated October 2, 2018. This is the Notice that was disputed by the Tenant.

The Notice is addressed to the Tenant and refers to the rental unit. It states that the Tenant failed to pay rent in the amount of $1,073.00 that was due October 1, 2018. It is signed and dated by the Building Manager. It has an effective date of October 12, 2018.

The Building Manager testified that she posted the Notice on the door of the rental unit October 2, 2018. The Tenant testified that she never received the Notice. The Applicant testified that he received the Notice around October 2, 2018 and agreed it was posted on the door of the rental unit.

The Applicant agreed rent is $1,013.00 per month due on the first day of each month. The Applicant agreed that $1,073.00 in rent was due October 1, 2018. The Applicant acknowledged that the $1,073.00 was never paid after the Notice was issued. The Applicant said no rent has been paid since the Notice was issued.

The Applicant testified that he disputed the Notice because the Tenant's name had not been changed to his name on the tenancy agreement. He further testified that the Landlord has not done anything that they promised to do and that he wants compensation for this. He also stated that the Landlord harasses him about the power

bill when he is only required to pay the city for the bill and not the Landlord. The Applicant further testified that he is disputing the rent increase. Lastly, the Applicant pointed to a list of issues he had submitted as his basis for not paying rent and disputing the Notice. These include the following:

Breach of rental contract causing:

1. Monetary losses due to Landlord threats, harassment, attempted monetary collections outside rental address from other family members;
2. Monetary losses due to attempting to collect for power/utility bills;
3. Monetary losses due to attempting to collect unjust rental increases;
4. Monetary losses due to deterring physical threats, actions, stress and frustrations inflicted by landlord agents;
5. Monetary losses due to not solving issues listed, items 1, 2, 3, 4 despite years of compromise attempted.

Copies of the Notices of Rent Increase for 2016 and 2017 had been submitted to me and appear to comply with the *Act*. I asked the Applicant what the issue with the rent increases is. At first, he said the rent increases were retroactive. I went through the Notices of Rent Increase with him, neither of which are retroactive. The Tenant then said the Landlord increased the rent in January of 2016.

The Building Manager testified that the only rent increases issued were for December of 2016 and December of 2017 as noted on the Notices of Rent Increase. Neither the Tenant nor the Applicant could point to any evidence that there was a rent increase issued in January of 2016. Nor could they point to any evidence that they paid more than the rent amount listed in the tenancy agreement as of January of 2016. The Applicant acknowledged that he could not show that there was an illegal rent increase and could not provide any documentation that there was a rent increase in January of 2016.

The Landlord had submitted the Notices of Rent Increase for 2016 and 2017. I note that the 2016 rent increase is based on the rent amount of $950.00 which is the rent amount stated in the tenancy agreement.

The parties agreed $2,086.00 in rent is currently outstanding. The Building Manager asked to amend the Landlord's application to request this full amount.

Analysis

Is the rent increase above the amount allowable by law?

The Tenant and Applicant testified that the Landlord issued a rent increase in January of 2016. The Building Manager denied this. The Notice of Rent Increase issued for December 1, 2016 is based on the "current rent" of $950.00 which is the rent amount stated in the tenancy agreement. The Tenant and Applicant provided no evidence that the Landlord increased the rent in January of 2016. I do not accept that the Landlord raised the rent in January of 2016 given the "current rent" noted on the Notice of Rent Increase for December 1, 2016 and lack of evidence to support the Tenant's position. Given I am not satisfied there was a rent increase in January of 2016, I do not accept that there was an illegal rent increase.

Should the Notice be cancelled? If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?

Section 26(1) of the *Act* requires tenants to pay rent when it is due under the tenancy agreement unless the tenant has a right to withhold rent under the *Act*.

The circumstances in which a tenant can withhold rent under the *Act* are as follows:

1. Where a landlord accepts a security or pet deposit that is greater than the amount permitted under the *Act*;
2. Where a landlord does not reimburse a tenant for amounts paid for emergency repairs in accordance with section 33 of the *Act*;
3. Where a landlord collects a rent increase that does not comply with the *Act*;
4. Where a tenant has been served with a notice to end tenancy under section 49 of the *Act* and therefore is entitled to receive the equivalent of one month's rent from the landlord; and
5. Pursuant to an arbitrator's order permitting the tenant to withhold or deduct from rent payments.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail 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.

…

Section 55(1) of the *Act* requires me to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

The parties agreed rent is $1,013.00 per month due on the first day of each month. The Applicant agreed $1,073.00 in rent was due October 1, 2018. The Applicant acknowledged that this amount was not paid.

The Applicant outlined the basis for the rent not being paid. As noted above, I do not accept that there has been an illegal rent increase in relation to this tenancy and therefore do not accept that the Tenant was authorized to withhold rent on this basis. None of the remaining reasons for not paying rent provided by the Applicant are a basis to withhold rent under the *Act*. I do not accept that the Tenant had a basis to withhold rent and therefore find the Tenant was required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

There was no issue that the Notice was posted on the door of the rental unit. The Applicant acknowledged receiving the Notice around October 2, 2018. The Tenant said she never received the Notice as she does not reside at the rental unit. I find pursuant to section 71(2)(c) of the *Act* that the Notice was sufficiently served on the Tenant. As stated above, the Landlord believed the Tenant resided at the rental unit. There is no evidence before me that the Tenant ever provided the Landlord with a different address.

The Tenant is a tenant in relation to the rental unit given the tenancy agreement. Further, the Tenant's son received the Notice and disputed it naming both himself and the Tenant as applicants. The address for service for the Tenant on the application is the rental unit address. In these circumstances, I find the Tenant was sufficiently served with the Notice. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice October 5, 2018.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on October 5, 2018 to pay or dispute it under section 46(4) of the *Act*. The Applicant acknowledged that no rent has been paid since the Notice was issued. The Tenant and Applicant disputed the Notice October 5, 2018, within the five-day time limit set out in section 46(4) of the *Act*.

The Applicant outlined the basis for the dispute which was the same as the basis for the non-payment of rent. However, the reasons provided are not a basis to find the Notice invalid. Therefore, I dismiss the Tenant's application to dispute the Notice.

Given I have dismissed the Tenant's Application and have found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*.

The Building Manager asked that an Order of Possession be effective November 30, 2018 if issued based on the Notice and I grant the Landlord an Order of Possession with this effective date.

Is the Landlord entitled to recover unpaid rent? Is the Landlord entitled to keep the security deposit towards unpaid rent?

As noted above, the Tenant was required to pay rent in accordance with section 26(1) of the *Act* and had no right to withhold rent under the *Act*.

The Applicant acknowledged $2,086.00 in rent is currently outstanding. I amend the Landlord's application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure. I find the Landlord is entitled to recover the $2,086.00 in outstanding rent.

Pursuant to section 72(2)(b) of the *Act*, the Landlord is entitled to keep the $475.00 security deposit towards the outstanding rent amount.

Is the Tenant entitled to reimbursement for the filing fee?

Given the Tenant was not successful in this application, I decline to award the Tenant reimbursement for the filing fee.

Is the Landlord entitled to reimbursement for the filing fee?

Given the Landlord was successful in this application, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

I dismiss the Tenant's application in relation to the rent increase, dispute of the Notice and request for the filing fee without leave to re-apply.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on November 30, 2018. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court. I note that this Order requires the Applicant to vacate the rental unit as well because the tenancy has ended for the Tenant and the Applicant, as an occupant, has no rights under the tenancy agreement or the *Act* in relation to the rental unit.
The Landlord is entitled to recover $2,086.00 in unpaid rent and $100.00 for the filing fee. The Landlord is entitled to keep the security deposit. The Landlord is granted a Monetary Order in the amount of $1,711.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: November 21, 2018

Residential Tenancy Branch