



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, OLC, PSF, RP, RR, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), for an Order for the Landlord to complete emergency repairs, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, an Order for services or facilities to be provided as required by the tenancy agreement or law, an Order for emergency repairs to be completed, a reduction in rent for repairs, services or facilities agreed upon by not provided, and for the recovery of the filing fee paid for this application.

The Tenant and three agents for the Landlord (the “Landlord”) were present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence package. Neither party brought up any concerns regarding service of these documents. Therefore, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

As stated in rule 2.3 of the *Rules of Procedure*, claims must be related to each other and unrelated claims may be dismissed. Due to the urgent nature of a dispute over a 10 Day Notice and a claim for emergency repairs, as well as the limited time available for the hearing, I exercise my discretion to dismiss the remainder of the Tenant's claims. The parties were informed at the beginning of the hearing that the hearing would proceed based on the Tenant's application to cancel the 10 Day Notice, the Tenant's claim for emergency repairs and the request for the recovery of the filing fee.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on July 1, 2010. Current monthly rent is \$825.00, due on the first day of each month. A security deposit of \$412.50 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Landlord provided testimony that on December 4, 2018 they served the Tenant with a 10 Day Notice by posting it on his door. The 10 Day Notice was submitted into evidence and states that the Tenant did not pay rent in the amount of \$60.50 that was due on December 1, 2018. The effective end of tenancy date of the 10 Day Notice was stated as December 14, 2018.

The Landlord further testified that the amount of \$60.50 is an outstanding amount owing due to late payment fees from August 2012, October 2012 and August 2014 rent. They

stated that a \$25.00 late fee was charged for these three months, and the Tenant paid for one late fee charge in November 2012, leaving \$50.00 in late fees owing.

They also stated that a hydro reimbursement of \$21.47 was being applied to the monthly rent. However, when the reimbursement started in September 2012 the Tenant underpaid by \$10.50. With the two unpaid late payment fees of \$25.00 and the underpayment of \$10.50, the Landlord stated that they are owed an amount of \$60.50.

The Landlord submitted into evidence the account ledger from June 2011 to December 2018. The ledger shows the late fee charges from 2012 and 2014 as well as a \$25.00 payment from the Tenant in November 2012.

In September 2012, the account ledger shows a late fee charge of \$25.00, rent owing in the amount of \$825.00 and a hydro reimbursement applied in the amount of \$21.47. The ledger shows two payments from the Tenant in the amount of \$25.00 and \$768.03 for a total payment of \$793.03.

The Landlord provided testimony that the current management took over in March 2015 and had provided notice to the Tenant of the outstanding rent owing after realizing that it was still outstanding. The Landlord was unsure of the date that the Tenant was notified.

The Landlord also stated that there was a matter regarding this tenancy before the Supreme Court which has recently been resolved. They stated that their legal counsel advised them not to pursue the outstanding amount until the court decision was finalized and since it has been, they were advised that they could move forward with serving a 10 Day Notice. The Landlord stated that they did not remind the Tenant of the \$60.50 owing prior to serving him with the 10 Day Notice.

The Tenant stated that he was not aware that the Landlord was claiming an outstanding amount of \$60.50 until he received the 10 Day Notice. He testified that he has never received any verbal or written notice of any amount owing. He stated that he provides a rent cheque to the Landlord in the mail slot every month.

He noted one time in 2012 when he was away and provided a post-dated cheque to the Landlord. He stated that the Landlord cashed the cheque three days early, prior to when the Tenant had transferred the funds into his chequing account. As such, the cheque did not go through due to insufficient funds and the Landlord charged a \$25.00 late fee.

The Tenant stated that the second time in 2012 when he was charged a \$25.00 late fee, the Landlord and the bank were not able to tell the Tenant what had happened. However, despite not being at fault for the rent being paid late, the Tenant stated that he paid this \$25.00 late fee.

The Landlord stated that a 10 Day Notice was served to the Tenant in 2014 for the outstanding amount owing, but the notice was canceled through a dispute resolution proceeding and there was no decision made on the amount owing.

The Tenant submitted into evidence a previous dispute resolution decision dated June 2, 2014. In this decision, a 10 Day Notice was cancelled, and two rent increases issued by the Landlord were cancelled. The decision states that the notice was cancelled as it was based on the unpaid amount of the rent increases. The Landlord's account ledger in June 2014 shows a reversal of rent increase charges to the Tenant.

Page 6 of the June 2, 2014 decision states the following:

As per the Landlord's submission, the Tenant's rent of \$825.00 per month is paid in full and the outstanding amounts are comprised of rent increase amount.

(Reproduced as written)

The Tenant also applied for emergency repairs and stated on the Application for Dispute Resolution that the Landlord has turned off the heat to his rental unit in the basement and that a valve must be repaired in order for his heat to work. However, during the hearing the Tenant testified that an agent for the Landlord attended his rental unit on December 18, 2018 and that the heat is now working. The Tenant stated that he did not have heat for over 2 years, other than a 3-day period where the issue was resolved.

The Tenant stated that there is a valve in the rental building that allows for the heat to be distributed between his unit and his neighbour's unit. This was initially providing the heat only to his neighbour, but this issue has since been fixed. However, the Tenant is concerned that the Landlord still has control over the heat to his rental unit. As such, the Tenant stated that he would like an order that if the Landlord adjusts his heat he will pay \$1.00 per month in rent, as a deterrent for the heat issues to occur again.

The Tenant submitted over 70 pages of evidence, including information on the history of the tenancy such as rent increases, communication regarding heating issues, and information on the Supreme Court matter which states that it began in 2016.

The Landlord stated that the rental unit is heated by radiators and that the Tenant has never had a heat issue in his unit. They stated that when they attended to assess the issue on December 18, 2018, the thermostat was off and there was heat when it was turned on. The Landlord submitted 7 photos into evidence that were taken on December 18, 2018 showing their thermometer readings between 25 and 32 degrees Celsius in the Tenant's rental unit. The Landlord further stated that they cannot control the heat, but that the Tenant has control of the heat through the thermostat in the rental unit.

The Landlord submitted over 25 pages of documentary evidence and photos. This includes 4 work order requests regarding the Tenant's concerns regarding the heat in his rental unit.

Analysis

Section 46(4) of the *Act* states that a tenant has 5 days in which to pay the overdue rent or apply to dispute a 10 Day Notice. The 10 Day Notice was posted on the Tenant's door on December 4, 2018. As stated by the deeming provisions of Section 90 of the *Act*, a document posted on a door is deemed received 3 days after posting. As such, I find that the 10 Day Notice was deemed received by the Tenant on December 7, 2018. As the Tenant applied to dispute the 10 Day Notice on December 10, 2018 I find that he applied within the timeframe provided under the *Act*. As such, the issue is whether the 10 Day Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

Section 46(1) of the *Act* allows a Landlord to end a tenancy with a 10 Day Notice if rent is unpaid on any day after the day it was due. However, the definition of "rent" as provided in Section 1 of the *Act* does not include allowable fees that a Landlord may charge, such as a late rent payment fee. As stated by Section 7 of the *Residential Tenancy Regulation*, a Landlord may charge a late fee as long as a tenancy agreement provides for that fee. However, this does not mean that the fee is considered rent.

Although there was a dispute over whether the Tenant owes any late rent payment fees, I find that this is not relevant in determining whether the 10 Day Notice is valid. The late payment fees are not included in the definition of rent and therefore a tenancy cannot be ended due to any late payment fees owing.

Regardless of the late rent fees, the Landlord also stated an amount of \$10.50 that was owing from an underpayment in rent from September 2012. The Landlord presented testimony that this was at the time a hydro reimbursement was being applied and I find evidence of this on the account ledger submitted by the Landlord. The ledger shows that September 2012 was the first time that a reimbursement was provided in the amount of \$21.47.

Neither party submitted any further evidence or testimony regarding the hydro reimbursement. Therefore, I do not find that I have information on what was provided to the Tenant at the time the reimbursement was implemented and how much rent the Tenant was advised to pay that month as a result. I also do not find evidence before me that the Tenant was ever notified that he owed \$10.50.

Due to the hydro reimbursement, other tenant reimbursements, late fee charges, rent increase charges and rent increase reversals, the account ledger is not entirely clear as to what the Tenant has owed each month and what has remained outstanding. As the party with the burden of proof it is up to the Landlord to present clear and detailed documentation to prove that the reasons for the 10 Day Notice are valid.

I also accept the previous dispute resolution decision submitted into evidence by the Tenant. In this decision, dated June 2, 2014, the 10 Day Notice was cancelled as it was found to be issued regarding unenforceable rent increases. The rent increase charges were later reversed.

The June 2, 2014 decision further states that the Landlord noted rent of \$825.00 had been paid in full at the time of the hearing. There was a reversal of rent increase charges in 2014 following this decision, but I have no further information on those calculations to be satisfied that \$10.50 was still owing afterwards. Given this evidence which brings into question whether an amount of \$10.50 has remained outstanding since 2012 and given that there is insufficient evidence for me to be satisfied that it is, I find that the 10 Day Notice is not valid.

Therefore, I find that the Landlord did not meet the burden of proof in this matter to establish that the 10 Day Notice is valid. Instead, I find that the Tenant was successful in his application to cancel the 10 Day Notice. The 10 Day Notice dated December 4, 2018 is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenant's claim for emergency repairs, I refer to Section 33(1) of the *Act*, which provides a definition for emergency repairs as follows:

In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Although it seems that there is a history between the parties regarding dispute over the heat in the rental unit, the parties agreed that as of December 18, 2018, the heat in the Tenant's rental unit is working. As such, I find that the issue is resolved and that there is no current heat concern that meet the definition of a repair that is urgent and necessary for potential health or safety concerns.

The Tenant requested an Order that rent would be reduced should they change the controls to the heat thus not allowing the heat in his rental unit to work. However, I do not find that such an Order falls under a claim for emergency repairs and instead, I find that there are no Orders necessary for the Landlord to complete emergency repairs.

As the Tenant was successful in his application to cancel the 10 Day Notice, pursuant to Section 72 of the *Act*, I award the Tenant the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct \$100.00 from his next monthly rent payment as satisfaction of this amount.

Conclusion

The 10 Day Notice dated December 4, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's application for emergency repairs is dismissed, without leave to reapply.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from his next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: January 10, 2019

Residential Tenancy Branch