



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPU, MNRL-S, MNSD, FFL
For the tenant: CNR, ERP

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) from both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 15, 2019 (“10 Day Notice”), for a monetary claim of \$35,000.00 for unpaid rent and utilities, to retain the tenant’s security deposit, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, for emergency repairs for health or safety reasons, and to recover the cost of the filing fee.

The tenant, the landlord, the spouse of the landlord, and an agent for the landlord RO (“agent”) attended the teleconference hearing. The tenant, landlord and agent provided affirmed testimony and presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Neither party raised any concerns regarding the service of documentary evidence and both parties confirmed being aware of the application of the other party.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord was asked how he arrived at the amount of \$35,000.00 being claimed. The landlord and agent were unable to provide amounts that matched the Monetary Order Worksheet (“monetary worksheet”) also did not match the amount of rent being claimed by the landlord. As a result, the landlord was advised that the landlord’s monetary claim was being refused, pursuant to section 59(5)(c) of the *Act*. I find the landlord failed to serve a supporting monetary worksheet on the tenant that matched the verbal testimony during the hearing in terms of the amount of rent and utilities claimed. Both parties have the right to a fair hearing. The tenant would not have the opportunity to know the details of the monetary claim against them without having been served with a clearly detailed Monetary Order Worksheet. Therefore, I find that proceeding with the landlord’s monetary claim would unfairly prejudice the

tenant. The landlord is at liberty to reapply but is reminded to ensure that any amount claimed is clearly set out in the monetary worksheet at the time the landlord makes their application.

As a result of the above, for the landlord's application I will only be determining whether the 10 Day Notice is cancelled or upheld and if the landlord is entitled to the recovery of the cost of the filing fee, as the tenant's filing fee has already been waived under the *Act*.

In addition to the above, the tenant was advised that the tenant failed to provide details of the emergency repairs being claimed for health or safety reasons. Therefore, for the same reasons stated, the tenant was advised that pursuant to section 59(5)(c) of the *Act* that the tenant's claim for emergency repairs was being refused due to insufficient details. I find it would be prejudicial to proceed when the landlord has not been served with notice of what emergency repairs are being claimed. The tenant is at liberty to reapply for emergency repairs but is reminded to ensure that sufficient details of such a claim must be included in the application.

Given the above, I will only be dealing with the 10 Day Notice and the landlord's filing fee.

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 10 Day Notice cancelled or upheld?
- Should the tenancy continue or should an order of possession be granted?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that the tenancy began on December 10, 2005. The parties also agreed that the monthly rent was originally \$1,350.00 per month. The landlord failed to provide any supporting evidence that the rent was increased in accordance with the *Act*.

The parties also agreed that rent was due on the 25th day of each month. A copy of the original tenancy agreement was submitted in evidence.

A copy of the 10 Day Notice was submitted in evidence. The parties agree that the 10 Day Notice is dated February 15, 2019 and that the tenant received it on the same day. The amounts owing listed on the 10 Day Notice are \$30,530 US and \$3,500 CND due on a date not specified plus \$110.75 in utilities based on a written demand dated February 18, 2019, which I note is the same date the 10 Day Notice was issued. The 10 Day Notice is not signed by the landlord and indicates an effective vacancy date of February 20, 2019, which is only 5 days after the 10 Day Notice was dated and served.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice, one of the considerations is under section 52 of the *Act* that requires that a 10 Day Notice must comply with the requirements set out in section 52.

Section 52 of the *Act* applies and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) **be signed** and dated **by the landlord** or tenant **giving the notice**,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) **when given by a landlord, be in the approved form.**

Emphasis added

Based on the above, I am not satisfied that the landlord completed the 10 Day Notice in full by failing to indicate the date on which the amount owing was due. In addition, the landlord provided a confusing amount in US dollars when the tenancy agreement does not make reference to US dollars or that payments are to be made in US dollars. And finally, the landlord failed to sign the 10 Day Notice, which is required. Based on the above, I cancel the 10 Day Notice as the form was not completed in full and therefore does not comply with section 52 of the *Act*. The 10 Day Notice is of no force or effect. The tenant's application is successful as a result.

I ORDER that the tenancy to continue until ended in accordance with the *Act*.

As the landlord's application did not have merit, I do not grant the landlord the recovery of the cost of the filing fee.

Conclusion

Both applications included a portion that was not considered as noted above. For those portions, the parties have liberty to reapply. My decision does not extend any applicable timelines under the *Act*.

The landlord's application fails as the 10 Day Notice does not comply with section 52 of the *Act*. The 10 Day Notice dated February 15, 2019 has been cancelled as it was not completed in full. The tenancy has been ordered to continue until ended in accordance with the *Act*. The landlord is also reminded that when issuing a demand for payment of utilities, the landlord must provide at least 30 days under the *Act* for the tenant to pay the unpaid utilities before that amount can be treated as unpaid rent. In the matter before me, the landlord lists the demand for payment date as the same date the 10 Day Notice was issued.

The tenant's application is successful.

This decision will be emailed to the parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 11, 2019

Residential Tenancy Branch