



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR-S, FF, CNR, RP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided testimony. The tenant attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence by posting it to the rental unit door on March 22, 2019. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person on March 27, 2019. Neither party raised any service issues. I accept the

undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenant's request for repairs was clarified. A review of the applications filed by both parties show that the primary issue before me is that of unpaid rent stemming from a 10 Day Notice. Repeated attempts to have the tenant clarify the request for repairs were unsuccessful. As such, I find that the tenant was unable to provide any details of how the request for repairs was related to the 10 Day Notice. RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for an order for the landlord to make repairs. As this section of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss this section of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on April 1, 2015 on a fixed term tenancy ending on March 31, 2016 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 17, 2015. The monthly rent was \$865.00 payable on the 1st day of each month. A security deposit of \$432.50 was paid on April 17, 2015.

Both parties confirmed in their testimony that the landlord served the tenant a 10 Day Notice dated February 4, 2019 for Unpaid Rent (the 10 Day Notice) of \$343.80 that was due on February 1, 2019. The 10 Day Notice also displayed an effective end of tenancy date of February 14, 2019.

Both parties confirmed that after the 10 Day Notice was served the tenant made a partial payment of \$300.00 on February 13, 2019. The landlord claims that at that time, the tenant was in arrears for \$43.80. Both parties confirmed that subsequently more rental arrears had occurred and that more partial rent payments were made.

The landlord seeks an order of possession for unpaid rent and an amended monetary claim of \$22.68.

The tenant argued that he is not in arrears as of the date of this hearing.

The landlord was unable to provide sufficient evidence during the hearing of the outstanding unpaid rent.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed testimony of both parties that the landlord served the tenant with the 10 Day Notice dated February 4, 2019 by posting it to the rental unit door. The tenant confirmed receiving the 10 Day Notice and reading it after receipt.

Both parties provided undisputed testimony that a late rent payment of \$300.00 was paid on February 13, 2019. The landlord provided undisputed testimony that a receipt was issued which stated that the payment was received “for use and occupancy only”, leaving a \$43.80 outstanding balance.

A review of the tenant’s application for dispute shows that the tenant’s application for dispute was submitted and filed on March 26, 2019.

Section 46 (5) of the Act states in part that a tenant who has received a notice under this section does not pay the rent or make an application for dispute within the allowed

timeframe is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

In this case, the tenant provided undisputed testimony that he received the 10 Day Notice dated February 4, 2019 posted to the rental unit door on February 4, 2019. The tenant also confirmed that he made a partial rent payment of \$300.00 on February 13, 2019 (9 days after receipt of the 10 Day Notice) leaving an outstanding balance of \$43.80. As such, I find based upon the evidence provided that the tenant is presumed to have accepted that the tenancy was at an end. The landlord's request for an order of possession is granted to be effective 2 days after upon the tenant being served.

As for the landlord's monetary claim, I find that although the landlord amended the monetary claim from \$43.80 lowering it to \$22.68 as the amount owing as of the date of this hearing, the tenant has disputed that there are any rental arrears. I find on a balance of probabilities that the landlord has failed to establish a claim for unpaid rent. The landlord clarified during the hearing that the outstanding portion was for the period of time immediately before the scheduled hearing time and well after the original application was filed. As such, this portion of the landlord's claim is dismissed with leave to reapply.

The landlord has been partially successful in the application and is entitled to partial recovery of \$50.00 of the original filing fee. As such, I authorize the landlord to retain \$50.00 from the currently held security deposit.

Conclusion

The landlord is granted an order of possession.

The tenant's application to cancel the 10 Day Notice is dismissed.

The tenant's application for repairs was dismissed with leave to reapply.

Leave to reapply is not an extension of any applicable limitation periods.

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: April 12, 2019

Residential Tenancy Branch