



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR, MNRL-S, MNDCL-S, FFL
For the tenant: CNR, MNDCT, RP, PSF, RR, FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order of \$9,000.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 3, 2019 (“10 Day Notice”), for a monetary claim of \$4,486.24 for compensation for damage or loss under the Act, regulation or tenancy agreement, for repairs to the unit, site or property, for a rent reduction, for an order directing the landlord to provide services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

An agent for the landlord PE (“agent”) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to ask questions and present relevant evidence which will be described further below. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However; only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised concerns regarding the service of documentary or digital evidence.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, related to the tenant’s application only consider the tenant’s request to cancel the 10 Day Notice and the tenant’s application to recover the cost of the filing fee at this proceeding. The balance of the tenant’s application is dismissed, with leave to re-apply.

Regarding the landlord’s claim, the parties were advised that the landlord’s monetary claim was being refused, pursuant to section 59(5)(c) of the *Act* because the landlord failed to serve a Monetary Order Worksheet or other details setting out how the landlord arrived at the \$9,000.00 amount claimed, as is required by section 59(2)(b) of the *Act* and Rule 2.5 of the RTB Rules.

I find that proceeding with the landlord’s monetary claim at this hearing would be prejudicial to the tenant, as the absence of particulars that set out how the landlord arrived at the amount of \$9,000.00 being claimed would make it difficult, if not impossible, for the tenant to adequately prepare a response to the landlord’s claim. In other words, it is not up to the respondent to guess what the claim is against them. I note the landlord applied on May 2, 2019, which provided sufficient time for the landlord to comply with Rule 2.5, however, the landlord failed to do so.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against them at the time the applicant submits their application. Given the above, the landlord is granted liberty to reapply for their monetary claim but is reminded to provide full particulars of their monetary claim. Applicants may include any additional pages to set out the details of their dispute in their application, as required.

In addition, the parties confirmed their email addresses at the outset of the hearing. The decision will be emailed to both parties and any applicable orders would be emailed to the appropriate party for service on the other party.

Issues to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 7, 2019. Monthly rent of \$2,250.00 is due on the first day of each month. The tenant paid a security deposit of \$1,125.00 at the start of the tenancy, which the landlord continues to hold. The tenant continues to occupy the rental unit.

The tenant confirmed receiving the 10 Day Notice on April 3, 2019 in the late afternoon. The tenant claims she was advised by an information officer that she had five days past the deemed service date to dispute the 10 Day Notice for a total of 8 days. The tenant filed their application to cancel the 10 Day Notice on April 11, 2019.

A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice indicates that \$2,250.00 was due April 1, 2019. The tenant agreed with the agent's testimony that the tenant did not pay rent for April and May of 2019. The tenant is alleging that due to a fridge issue, the tenant did not pay rent to the landlord for April or May of 2019. The effective vacancy date listed on the 10 Day Notice was April 13, 2019, which has passed.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – The tenant testified that she received the 10 Day Notice on April 3, 2019. The tenant did not file her application to dispute the 10 Day Notice until April 11, 2019. Section 46 of the *Act* applies and states:

Landlord's notice: non-payment of rent

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 *[form and content of notice to end tenancy]*.

(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.

[Emphasis added]

Under section 88 of the *Act*, while documents posted to the door are deemed served three days after they are posted, this does not override actual service and in the matter before me, the tenant affirmed that she received the 10 Day Notice on April 3, 2019. Therefore, I find the tenant had 5 days under section 46 of the *Act* to dispute the 10 Day Notice no later than Monday, April 8, 2019. The tenant waited 8 days, by filing their application on Thursday, April 11, 2019, which I find is three days late and outside of the timeline provided under section 46 of the *Act*. Therefore, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date listed on the 10 Day Notice, which was April 13, 2019.

Given the above, I dismiss the tenant's application without leave to reapply, as the tenant filed their application outside of the timeline under section 46 of the *Act* which is indicated above. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

As a result of the above, and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit.

As the landlord has been granted an order of possession, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

As the landlord was granted an order of possession, I grant the landlord the recovery of the cost of the \$100.00 filing fee pursuant to section 72 of the *Act*. I authorize the landlord to deduct **\$100.00** from the tenant's \$1,125.00 security deposit in full satisfaction of the recovery of the cost of the filing fee, pursuant to sections 38, 67 and 72 of the *Act*. I find the tenant's new security deposit balance is \$1,025.00 effective immediately as a result.

As the tenant's application was dismissed, I do not grant the tenant the recovery of the cost of the filing fee under the *Act*.

Conclusion

The tenant's application is dismissed, without leave to reapply, other than the monetary claim, which was severed as indicated above.

The tenancy ended April 13, 2019. The landlord has been granted an order of possession effective two (2) days from served on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court, in necessary.

The landlord has been authorized to retain \$100.00 from the tenant's security deposit as indicated above, in full satisfaction of the recovery of the cost of the filing fee under the *Act*.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord for served on the tenant.

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: May 30, 2019

Residential Tenancy Branch