



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“Act”), I was designated to hear an application regarding the above-noted tenancy. 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; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (male and female) did not attend this hearing, which lasted approximately 26 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. with only me present. The landlord called in late at 9:32 a.m. She claimed that she called the wrong phone number. The hearing ended at 9:56 a.m.

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord’s paper application only, not any participation by the tenants. The landlord failed to provide a valid Notice of Rent Increase (“NRI”) to prove the rent, so this matter was adjourned from a direct request proceeding to this participatory hearing.

The landlord claimed that both tenants were served with the landlord’s application for dispute resolution hearing package on June 8, 2019, by way of registered mail to the rental unit where the tenants are residing. The landlord provided two Canada Post receipts and tracking numbers with this application. The landlord confirmed the tracking

numbers verbally during the hearing. She said that both items were returned to her as sender, unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on June 13, 2019, five days after their registered mailings.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 6, 2019, ("10 Day Notice"), by way of registered mail to the rental unit. The landlord originally claimed that it was May 28 and then changed her evidence to May 6. The landlord provided a copy of an envelope with a tracking number and confirmed it verbally during the hearing. The Canada Post website indicates "multiple PIN" for this tracking number. The landlord said that the envelope came back to her as "moved" but the tenants had not moved out. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 10 Day Notice on May 11, 2019, five days after its registered mailing.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord interrupted me, talked at the same time as me and argued with me. I cautioned the landlord multiple times to stop interrupting me and to allow me to speak. The landlord continued to interrupt me and when I spoke, she would speak louder than me, so she could not hear what I was saying.

Throughout the hearing, the landlord would get upset, sigh and say "oh my God" when I asked her to confirm information about her application. She claimed that she should not have to confirm information on her tenancy agreement or the 10 Day Notice because that is why she sent the evidence in to the Residential Tenancy Branch ("RTB"). I

notified her that she was required to confirm this important information in order for me to make a decision and issue any orders.

The landlord did not have her documents in front of her during this hearing. She spent approximately 15 minutes of the hearing time, going through her paperwork and logging on to her computer during the hearing because she was not able to answer my questions about this tenancy.

The hearing took longer because of the disruptive behaviour of the landlord. Despite the landlord's behaviour, I allowed her to attend the full hearing, in order to provide her with a full opportunity to present her application.

I caution the landlord to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and she may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on May 15, 2017 for a fixed term ending on May 31, 2018, after which it became a month-to-month tenancy. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by the female tenant only, not the male tenant. A copy of the tenancy agreement was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of May 21, 2019, indicating that rent in the amount of \$1,332.50 was due on May 1, 2019. The landlord provided a copy of the notice. The landlord initially claimed that rent was

\$1,300.00 as per the tenancy agreement, but then stated that she increased the rent to \$1,332.50, effective May 1, 2019. The landlord did not provide a copy of the NRI but stated that she raised the rent by the proper 2% and her boyfriend served it in person but she does not know what date and she did not keep a copy of the NRI. She provided a text message from the female tenant, stating that she agreed to the rent increase on February 11, 2019.

The landlord stated that if she could not prove the rent was \$1,332.50, she would only claim for the \$1,300.00 as per the original tenancy agreement. She claimed that the tenant failed to pay rent for May, June and July 2019.

The landlord seeks an order of possession based on the 10 Day Notice. She seeks a monetary order for unpaid rent of \$3,900.00 from May to July 2019 at this hearing but she originally applied for \$1,332.50. She also seeks to recover the \$100.00 application filing fee.

Analysis

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which the landlord said was the first day of each month. Section 46 of the *Act* states that the landlord may only issue a 10 Day Notice for any day after the rent is due.

In this case, the landlord claimed that rent of \$1,332.50 was due on May 1, 2019. However, under the parties' tenancy agreement, the rent was \$1,300.00. The landlord failed to provide a valid NRI showing that she increased the rent, what the amount of increase was, when it was effective, what the date of the notice was, and when it was served to the tenants. The landlord was cautioned about the NRI when she applied for the direct request proceeding and that is why this matter was adjourned to a participatory hearing.

Further, the additional \$32.50 increase in rent per month is not a 2% increase, as claimed by the landlord during the hearing. I do not find that the tenant's text message from February 11, 2019 to be a valid NRI, as it does not indicate the date or amount of any rent increase, and is not the required full three months' notice for an NRI to be effective on May 1, 2019. The NRI must be in a valid RTB form in order to be effective.

Therefore, I find that the tenants did not have notice of the proper amount of rent due. The 10 Day Notice provided the amount of \$1,332.50 due on May 1, 2019. I find that the tenants did not have an opportunity to pay the rent in order to cancel the notice because the rent information supplied by the landlord cannot be confirmed.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice and I dismiss this application without leave to reapply. The landlord's 10 Day Notice, dated May 6, 2019, is cancelled and of no force or effect.

As the landlord failed to establish the proper amount of rent due, I dismiss her application for a monetary order for unpaid rent, with leave to reapply.

As the landlord was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenants.

I also note that the male tenant did not sign the tenancy agreement. However, the 10 Day Notice and this application were made against him by the landlord. The landlord failed to prove that he is a proper "tenant" for this tenancy.

Conclusion

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

The remainder of the landlord's application is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated May 6, 2019, is cancelled and of no force or effect.

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: July 18, 2019

Residential Tenancy Branch