



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the **tenants'** application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46; and
- an extension of time to provide her pet damage deposit.

Both tenants attended the hearing. The landlord was represented by its property manager ("**GC**"). Each were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant SH testified, and the **landlord** confirmed, that the **tenants** served the **landlord** with the notice of dispute resolution form and supporting evidence package. The **landlord** testified, and **tenant SH** confirmed, that the **landlord** served the **tenants** with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- 1) The cancellation of the Notice?
- 2) An extension of time to pay their pet damage deposit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting July 1, 2019. Monthly rent is \$1650 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$825 and a pet damage deposit of \$779.56. The landlord still retains these deposits. The tenant testified that she believed she had paid the entirety of pet damage deposit owed (\$825) on September 20, 2019, and only learned at this hearing that the landlord believed an additional \$45.44 was owing.

In their amendment to application for dispute resolution (filed August 15, 2019), the tenants requested additional time to pay the pet damage deposit. Tenant SH testified that she is now able to pay whatever amount of her pet damage deposit remains.

GC testified that the tenants have repeatedly been late paying monthly rent. However, as this application was filed to dispute a 10 Day Notice to End Tenancy, I need only consider payments relating to the arrears listed on the Notice. For the purposes of this application, the relevant payment dates are as follows:

- 1) August 1, 2019 – government agency pays the landlord \$1,500 on behalf of the tenants;
- 2) August 9, 2019 – the tenants pay the landlord \$125; and
- 3) September 3, 2019 – a government agency pays the landlord \$1,579.56 on behalf of the tenants.

The landlord did not enter a ledger or other document into evidence that sets out these dates and amounts. Rather, these figures are based on the testimony of GC. The tenants did not dispute these payment amounts or dates.

On August 2, 2019, GC wrote the tenants and stated:

My office has informed me that you are short \$125 in your rent and that you have not paid your pet deposit as of yet.

Please be advised that we need the \$750 pet deposit and \$125 rent by the end of today, otherwise I am left with no choice but to issue an eviction notice.

On August 3, 2019, the landlord issued the Notice which was served personally on the tenants. It listed an effective date of August 13, 2019. The Notice stated the reason for ending the tenancy was that the tenant "failed to pay rent in the amount of \$1,650 that was due on August 1, 2019". The Notice listed the tenant's address for service correctly but listed the city and postal code of the rental unit to be vacated incorrectly.

Tenant SH testified that she was confused with the amount listed on the Notice, as she had understood that \$1,500 of the monthly rent had already been paid. She wrote GC on August 3, 2019:

I received [sic] your eviction notice and would like some clarification as to where you got the amount of \$1650 owing from? As per your email from yesterday you informed me that we owe 125 for rent and 750 for a pet deposit. This notice is incorrect. Could you please confirm where you got your numbers from and if you cannot, reissue a new notice with correct information including the rental address?

On August 4, 2019, GC replied, in part:

[...]

2. The eviction notice and warning letter has the correct information on it and I will not be reissuing a new one.

3. The amount in arrears is \$150 for August rent and \$750.00 in pet deposit.

[...]

At the hearing GC testified that, at the time she issued the Notice she did not know if the landlord had received \$1,500 from the government agency, as sometimes it takes several days for the landlord's bookkeeper to record the payment. I note that this is not consistent with her emails of August 2 and 4, 2019, wherein she states that the tenant is in arrears of \$125 and \$150 respectively.

Tenant SH testified that she showed the Notice to the government agency which assisted her with the monthly rent, who told her that they were unable to assist her with

further payment due to the errors on the Notice. Tenant SH did not provide any correspondence or other document to corroborate this.

Tenant SH testified that she then had to rely on her employment insurance cheque to cover the arrears. She testified she did not receive this cheque until August 9, 2019, at which time she paid what she understood the outstanding rental arrears to be (\$125) based on the landlord's email of August 2, 2019.

On August 6, 2019 (three days after being served), the tenants filed an application for dispute resolution to contest the Notice.

During the hearing the parties gave oral testimony about other disputes related to the tenancy. As this application does not relate to those disputes, and the parties have another hearing scheduled in November 2019, I will not recount these details of the parties' testimony.

The parties agree that, as of the time of the hearing, the tenants are not in arrears.

Landlord's Position

The landlord argued that the tenants were late in paying August 2019 rent, and that they did not pay the full balance of the arrears within 5 days of receiving the Notice. As such, the landlord says that the tenancy should be terminated.

Tenants' Position

Tenant SH argued that the Notice was invalid as it did not properly set out the amount the tenants owed. Tenant SH argued that this error caused her to be unable to pay the arrears owed within five days of service of the Notice.

As such, she argues that the Notice should be set aside.

Analysis

Notice to End Tenancy

In accordance with section 88 of the Act, I find that the landlord served the tenants with the Notice on July 3, 2019.

The parties disagreed as to what amount of rent was owing as of August 3, 2019. GC testified that, at the time she issued the Notice, she believed that the full monthly rent (\$1,650) was owing. This is despite her testimony that the landlord received payment of \$1,500 for the tenants rent on August 1, 2019. She testified that what likely occurred was the landlord has not yet processed the \$1,500 payment at the time she issued the Notice. However, this assertion is not supported by the documentary evidence.

In an email to the tenants dated August 2, 2019 (one day before she issued the Notice), GC wrote (incorrectly) that the tenants' rental arrears were \$125 (they were actually \$150).

Based on this, I find that at the time the Notice was issued, the landlord knew that the tenants' rental arrears were not \$1,650, as listed on the Notice.

Section 46 of the Act 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]*.

Section 52 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,
 - (d.1)for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e)when given by a landlord, be in the approved form.

While Section 52 is silent as to whether the amount of rent listed on the Notice must be accurate, it does require that the Notice be in the approved form. I find that implicit in this requirement is that the form be completed accurately. This does not, in and of itself, mean the Notice is invalid. Section 68 states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Tenant SH testified that this error caused her confusion. I accept this testimony. Upon receipt of the Notice, tenant SH emailed GC seeking clarification regarding the amount owing, and GC responded that there were no errors on the Notice, and (confusingly) that “the amount of arrears is \$150 for August rent and \$750 in pet deposit”.

This response seems to suggest that the arrears are \$900 (\$150 plus \$750) and not \$1,650. I must also note that a late pet damage deposit does not form any part of rental arrears.

I find that tenant SH attempted to clarify the correct amount of arrears and GC refused to provide any clarification. I find that GC’s response served to increase the confusion as to the amount of arrears actually owing. (To summarize, the tenants were told by GC that the arrears were \$125 on August 2 via email, \$1,650 on August 3 via the Notice, and either \$150 or \$900 on August 4 via email.)

I find that the Notice fails to properly advise the tenants of the amount of arrears, and that based on the information provided by GC, the tenants could not have reasonably known how much the arrears were. As such, I decline to order that the Notice be amended, and find that the Notice does not meet with the section 52 requirements. I therefore order that the Notice is cancelled and of no force and effect.

I agree with the landlord that the tenants did not pay the full rental arrears within five days of receipt of the Notice. However, this does not mean that the tenants are automatically deemed to have accepted that the tenancy has ended. Section 46 (4) and (5) state:

(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.

I find that the tenant made an application for dispute resolution within five days of being served with the Notice. As such the conclusive presumption that the tenancy has ended is not triggered by the tenants' non-payment of the rental arrears within five days. The tenants only have to take one of the two courses of action set out in section 46(4), not both.

Pet Damage Deposit Time Extension

No evidence was presented at the hearing for a basis to provide an extension of time for paying the pet damage deposit. Indeed, the tenants' evidence was that they believed the deposit had been fully paid. The landlord disagreed. I make no finding on this issue.

Based on the tenants' submissions at the hearing I understand that the tenants no longer require an extension of time. As such, I decline to make an order extending the period of time to pay the pet damage deposit. I dismiss this portion of the tenants' application.

Conclusion

I order that the Notice 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: October 10, 2019

Residential Tenancy Branch