



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL DEVELOPMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL OPRM-DR CNR FFT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$2,830 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenants’ for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord’s office manager (“**AM**”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that AM and I were the only ones who had called into this teleconference.

AM testified that the tenants were each served the notice of dispute resolution form and supporting evidence package via registered mail. She provided two Canada Post tracking number confirming this mailing which are reproduced on the cover of this decision. I find that the tenants have been served in accordance with the Act.

Although the tenants did not appear at this application, they did serve documentary evidence on the landlord. No evidence was given as to the method or date that this occurred, but AM referred to the tenants' documents in the course of her submissions, which demonstrate that they were served on the landlord. Accordingly, I find that the tenants served the landlord with their evidence in accordance with the Act.

Preliminary Issue – Amendment of Claim

On the landlord's application for dispute resolution, one of the tenants is named "TB". The name "TB" does not appear on the tenancy agreement or on the tenants' application for dispute resolution. Rather the name "CB" appears. The first name of tenant "TB" is the same as the last name of tenant "ET". AM testified that the landlord inadvertently erred in listing one of the respondents as "TB" instead of "CB." She testified that and the proper respondents to the landlord's application were "CB" and "ET".

I accept that this was a typographic error and should be rectified. Pursuant to Rule of Procedure 4.2, I order that the application be amended to substitute the name of "CB" for that of "TB" as a respondent.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) A monetary order for \$2,380?
- 2) An order of possession for unpaid rent?
- 3) Recover its filing fee?

Are the tenants entitled to:

- 1) An order cancelling the Notice?
- 2) Recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of AM, not all details of her 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 February 1, 2019 and ending July 31, 2019. It then converted to a periodic tenancy. AM testified that the tenants vacated the rental unit on October 2, 2019. Monthly rent was \$800 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$400. The landlord still retains this deposit.

AM testified that prior to entering into the tenancy agreement, the tenants rented another unit from the landlords. She testified that at the end of that tenancy the tenants were \$300 in arrears.

AM testified that the tenants did not pay full monthly rent from Feb to August 2019, in the amount of \$2,530.

She provided a ledger of the tenants' account, as follows:

Date Paid	Rent	Paid	Short	Over	Balance Due
January 3, 2019 (in prior apt)	\$800	\$500	\$300	\$0	\$300
February 1, 2019	\$800	\$340	\$460	\$0	\$760
March 4, 2019	\$800	\$350	\$450	\$0	\$1,210
April 17, 2019	\$800	\$850	\$0	\$50	\$1,160
May 1, 2019	\$800	\$0	\$800	\$0	\$1,960
June 1, 2019	\$800	\$0	\$800	\$0	\$2,760
July 22, 2019	\$800	\$700	\$100	\$0	\$2,860
August 8, 2019	\$800	\$830	\$0	\$30	\$2,830

AM testified that the tenants paid their rent in cash.

The landlord issued a 10 Day Notice to End Tenancy (the "**Notice**") dated August 15, 2019 for \$ 3,640 in unpaid rent due on August 1, 2019. The Notice has an effective date on August 26, 2019. The landlord entered a copy of the Notice into evidence.

The landlord posted the Notice on the tenants' door on August 15, 2019. The tenants disputed the Notice on August 22, 2019.

AM testified that, to date, the tenant is \$2,830 in rental arrears.

In the course of her submissions, AM referred to receipts submitted by the tenants in their evidence package. These receipts appear to be from the then-building manager to the tenants confirming the payment of rent in cash (AM did not to state why the then-building manager no longer works for the landlord). The receipts appear to be signed by the then-building manager. The amounts of rental payment these receipts show differ from those set out by the landlord in its ledger.

AM testified that she did not know if these receipts were real but stated that the format of them changed from 2018 to 2019 (date written in a different format and font size change). She argued that suggests that the receipts are not genuine. She also suggested that the signature is not consistent in size between the 2018 and 2019 receipts.

The tenants' receipts reveal the following picture of payments and credits (I have taken the liberty of inserting the monthly rent sue:

Date	Description	Amount
January 1, 2019	Rent (in prior apt)	\$800
January 3, 2019	Receipt of Cash Payment (in prior apt)	-\$500
February 1, 2019	Rent	\$800
February 8, 2019	Receipt of Cash Payment	-\$320
February 23, 2019	Receipt of Cash Payment	-\$320
March 1, 2019	Rent	\$800
March 2, 2019	Receipt of Cash Payment	-\$820
April 1, 2019	Rent	\$800
April 19, 2019	Receipt of Cash Payment	-\$820
May 1, 2019	Rent	\$800
May 10, 2019	Receipt of Cash Payment	-\$820
June 1, 2019	Rent	\$800
June 3, 2019	Receipt of Cash Payment	-\$800
July 1, 2019	Rent	\$800
July 21, 2019	Receipt of Cash Payment	-\$850
August 1, 2019	Rent	\$800
August 2, 2019	Cheque	-\$830
	Total arrears	\$320

AM testified that it was not the practice of the landlord to accept cash payments for rent but acknowledges that the then-building manager did accept rent payments in cash from the tenants. She testified that she does not know if receipts were issued by the

then-building manager. She testified that, if they were, she does not have copies of them.

Analysis

Section 46 of the Act, in part, 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]*.

[...]

(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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, even though the tenants brought an application to contest the Notice and failed to attend the hearing, the landlord bears the onus to demonstrate that the Notice is valid by proving on a balance of probabilities that the rent arrears were owing as alleged on the Notice, and that the amount was not paid within five days of the Notice being deemed served.

I find that the tenants are deemed served with the Notice on August 18, 2019, three days after it was posted on their door, pursuant to section 90 of the Act.

I find that the tenants disputed the Notice within 5 days of being deemed served.

Rule of Procedure 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the ordinary course of a hearing where one party submits evidence but does not attend, I would not consider any of the evidence they have submitted in support of their application. However, in the present case, AM referred to multiple documents in the tenants' evidence. As such, despite the tenants' non-attendance, I find that it is appropriate consider the evidence that the tenants submitted.

Amount of Arrears

I must first note that \$300 of the arrears claimed by the landlord is with regards to the tenants' rental of a different rental unit, pursuant to another tenancy agreement. As such, I find that these arrears do not properly recoverable in this application. A notice to end tenancy must be issued on the basis of arrears arising out a current tenancy and tenancy agreement. For the purposes of a notice to end tenancy, arrears do not accrue across agreements and rental units.

There is a conflict between the evidence of the landlord and the evidence of tenants regarding the amounts and timing of rental payments. The landlord alleges the tenants are \$2,530 in arrears (the amount claimed, less \$300). The tenants have provided receipts which, if accepted as true, show that they are \$20 in arrears (again, after discounting for the \$300 from the prior tenancy).

AM did not directly allege that the tenants' receipts were fraudulent. Rather she pointed out inconsistencies in formatting and signature size between the 2018 receipts (from the

former tenancy between the parties) and the 2019 receipts (from the current tenancy). I am not persuaded that these differences indicate that the 2019 receipts are fraudulent. It is reasonable that, over the course of a year, the font size or date format might change in a typed receipt for rent paid, or that the size of a signature may vary.

Based on AM's testimony, I find that, although it was against the landlord's policy, the landlord accepted rental payments in cash from the tenants. Section 26(2) of the Act states:

Rules about payment and non-payment of rent

26(2) A landlord must provide a tenant with a receipt for rent paid in cash.

Such a requirement exists to create a record for a tenant of what would otherwise be an undocumented transaction. This section places a positive obligation on the landlord to provide the receipt.

As I am not persuaded that the receipts are fraudulent, and as the landlord has an obligation to provide receipts for cash payments of rent to the tenants, I accept the amounts listed on the tenants' receipts correctly reflect the amounts of rent the paid.

Accordingly, I find that the tenants were in arrears of \$20 as of August 15, 2019.

Section 47 of the Act requires that the Notice comply with section 52, which 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. I find that the landlord failed to do this.

However, 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.

I find that while the tenants may have known or ought to have known the correct amount of arrears, it would not be reasonable to amend the Notice to list the correct amount. Had the Notice correctly set out the amount of arrears when it was served it is likely that the tenants would have paid the arrears within five days, rather than commence an application for dispute resolution, as the amount of arrears (\$20) is less than the filing fee for their application to dispute the Notice (\$100). As such, I decline to amend the Notice.

Accordingly, I find that the Notice does not comply with section 52 and is therefore invalid. I decline to grant the landlord an order of possession.

As I have found that the tenants are in arrears of \$20, I order that they pay this amount to the landlord. Pursuant to section 72(2) of the Act, I order that the landlord may keep apply \$20 of the security deposit in satisfaction of this amount. The landlord is advised to deal with the balance of the security deposit (\$380) in accordance with the Act.

In light of the tenants' non-attendance, I decline to award them the recovery of their filing fee.

As the landlord was largely unsuccessful in its application, I decline to award it the recovery of its filing fee.

Conclusion

I order that the Notice is cancelled.

Pursuant to section 72(2) of the Act, the landlord may retain \$20 of the security deposit in full satisfaction of the rental arrears owed by the tenants.

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 17, 2019

Residential Tenancy Branch