



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THUAN PHUOC HOLDDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:04 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the first eight minutes of this hearing, but lost connection with the teleconference at that point and was unable to successfully reconnect with the teleconference hearing until 9:53 a.m. The landlord retained contact with the teleconference for the remaining eleven minutes of this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Landlord Representative SL gave undisputed sworn testimony that they handed the tenant two different 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) on July 25, 2019 and September 15, 2019. I accept this undisputed sworn testimony and find that the tenant was served with these Notices in accordance with section 88 of the *Act*. Landlord Representative SL gave undisputed sworn testimony that they handed the tenant a copy of the tenant's dispute resolution hearing package on October 12, 2019. I find that the tenant was served with this package in accordance with section 89 of the *Act* on that date. Neither party provided written evidence prior to this hearing.

At the hearing, Landlord MO (the landlord) attempted to scan a copy of the 10 Day Notice of July 25, 2019 and enter it into the Residential Tenancy Branch's (the RTB's) Service Portal. As Landlord MO was unsuccessful in doing so, I ordered the landlord to attend the RTB's Offices in the adjacent municipality by the end of this business day to provide copies of the two 10 Day Notices issued to the tenant. As the landlord provided copies of these documents to the RTB on the afternoon of this hearing in accordance with my direction, I have taken these documents into consideration in reaching my decision.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy in a single room occupancy facility commenced on May 1, 2019. Monthly rent is set at \$450.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$225.00 security deposit paid when this tenancy began.

The landlord testified that the amount identified as owing on the 10 Day Notice of July 25, 2019 was \$450.00. They said that the amount identified as owing on the second 10 Day Notice was \$1,350.00.

The landlord's claim for a monetary award of \$1,800.00 included unpaid rent of \$1,350.00 owing for the months of July, August and September 2019, plus a monetary award of \$450.00 to repair a door that the tenant had allegedly damaged.

Both landlord representatives testified that the tenant has not made any payments to the landlord since the first 10 Day Notice was issued. They said that at this time five months of rent remains owing, representing \$2,250.00 in total. At the hearing, they asked for full recovery of all of the rent that is owing at this time. Since the tenant would have known that rent needed to be paid for each of the months since the 10 Day Notices were issued, I allowed the landlord's request to increase the amount of the monetary award sought to reflect the additional months where rent has not been paid.

At the hearing, the landlord said that they would likely be able to re-rent this room to someone else for part of November, once they are able to obtain possession of the room from the tenant.

Analysis

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “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.” Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. However, section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

In examining, the landlord's 10 Day Notices, I noticed many inconsistencies between Landlord SL's sworn testimony and the information on these Notices, and within the information contained in these Notices.

Although Landlord SL testified that they handed the first of the 10 Day Notices to the tenant on July 25, 2019, the first 10 Day Notice is dated August 15, 2019. While rent of \$450.00 was shown as owing as of July 1, 2019, the first 10 Day Notice also indicated that \$450.00 in utilities were owing following a written demand on August 1, 2019. At the hearing, the landlord's representatives only referenced unpaid rent, with no mention of any utilities owing. Although the first 10 Day Notice was dated July 25, 2019, the landlord did not identify any effective date whereby the tenancy was to end.

The second 10 Day Notice contained similar deficiencies and inconsistencies. While dated September 15, 2019, the date when Landlord SL testified they handed that 10 Day Notice to the tenant, the second 10 Day Notice stated that the 10 Day Notice was handed to the tenant on September 25, 2019. In that 10 Day Notice, \$1,350.00 in rent was identified as of July 1, 2019, which was clearly contradictory to the information on the earlier 10 Day Notice. In addition, the second 10 Day Notice identified \$1,350.00 in utilities owing following a written demand on October 1, 2019. This would clearly be impossible given that no unpaid utilities were identified as owing by the landlord's representatives. Even if this amount of unpaid utilities were owing, October 1, was well after Landlord SL claimed to have served the 10 Day Notice to the tenant and after the September 25, 2019 date identified as the service date on that 10 Day Notice. As was the case with the earlier 10 Day Notice, the second 10 Day Notice did not identify an effective date whereby this tenancy was to end.

Although I have considered the landlord's late evidence that was submitted to the Residential Tenancy Branch (the RTB) well after the 14 day time limit for doing so, and after the hearing was completed, I find that the landlord's 10 Day Notices were inconsistent with the sworn testimony provided to me with respect to the service of these Notices. The information in these Notices was also inconsistent and deficient in the ways identified above. For these reasons, I find that the landlord has not demonstrated compliance with the requirements of section 52 of the *Act* with respect to the information contained in their 10 Day Notices. There are far too many deficiencies in these Notices to enable me to provide the landlord with an Order of

Possession to end this tenancy for unpaid rent. I dismiss the landlord's application to end this tenancy on the basis of the two 10 Day Notices without leave to reapply.

If the landlord intends to end this tenancy for unpaid rent, the landlord will need to serve the tenant with a new 10 Day Notice to End Tenancy for Unpaid Rent.

Due to the problems associated with the landlord's conflicting evidence regarding the two 10 Day Notices that were before me, I strongly urge the landlord to have someone witness any direct service of a future 10 Day Notice, an application for dispute resolution or written evidence provided to the tenant. The landlord would also be wise to complete a witnessed Proof of Service document, which is available on the RTB's website, to demonstrate how documents have been served to the tenant in the future. Since the landlord clearly had difficulties in filling out the 10 Day Notices, they may also wish to consult with a representative of the RTB before they complete the 10 Day Notices and any Proof of Service forms they wish to enter into evidence in a future application for dispute resolution. The landlord is also reminded that the RTB's Rules of Procedure require all written evidence from applicants to be provided to both the Respondent and the RTB at least 14 days before a hearing, which did not occur with respect to the landlord's current application.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

While there may very well be money owed by the tenant to the landlord, the 10 Day Notices contain references to unpaid rent **and** utilities with many different dates cited in the two Notices. For this reason, I dismiss the landlord's application for a monetary award with leave to reapply.

I dismiss the landlord's application for compensation for damage to a door in this rental property by the tenant as the landlord has not yet repaired that door and has not yet suffered any real losses in this regard. The landlord is at liberty to reapply for this premature portion of their application once true repair costs are known and this work has been completed.

As the landlord has been unsuccessful in this application, I dismiss both their application to recover their filing fee and their application to retain the tenant's security deposit.

Conclusion

I dismiss the landlord's application to end this tenancy on the basis of the two 10 Day Notices issued to the tenant. Those 10 Day Notices are of no force or continuing effect. This tenancy continues until ended in accordance with the *Act*. The landlord is at liberty to issue a new 10 Day Notice for rent that remains owing.

The landlord's application for a monetary award for unpaid rent and for damage is dismissed with leave to reapply. The landlord's application to recover the filing fee and to retain a portion of the tenant's security deposit is dismissed.

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: November 08, 2019

Residential Tenancy Branch