



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, LRE, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 09, 2019 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 02, 2019 (the “Notice”);
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Translator. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure, I advised the Tenant at the outset that I would hear the dispute of the Notice and consider reimbursement for the filing fee and dismiss the remaining claims as they are not sufficiently related to the dispute of the Notice. The remaining claims are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence

and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 22, 2018 and was for a fixed term ending October 21, 2019. The tenancy then became a month-to-month tenancy. Rent at the start was \$3,700.00 per month due on the first day of each month.

A Notice of Rent Increase was submitted as evidence indicating rent was increased to \$3,792.50 starting December 01, 2019. The Landlord took the position that the rent increase was valid and rent was \$3,792.50 as of December 01, 2019.

The Tenant took the position that the rent increase was not valid because the Landlord only provided a digital copy through "WeChat". The Tenant took the position that the Notice of Rent Increase was not served in accordance with the *Act* and therefore is not enforceable. The Tenant acknowledged receipt of the Notice of Rent Increase and said she received it around August 26, 2019.

The Landlord testified that the parties communicated through "WeChat" in relation to the rental. The Tenant testified that the parties stopped communicating through "WeChat" a year ago.

The Notice states the Tenant failed to pay \$92.50 in rent that was due December 01, 2019. It also states the Tenant failed to pay \$59.00 in utilities following written demand on December 02, 2019.

The Translator testified that he posted the Notice on the door of the rental unit December 02, 2019. The Tenant acknowledged receipt of the Notice the same day.

The Landlord confirmed that the rent amount on the Notice is the rent increase amount. The Tenant acknowledged she did not pay the rent increase as her position is that it is not enforceable.

In relation to the utilities, the parties agreed the Tenant is responsible for paying for water and sewer. The Landlord, through the Translator, testified that the \$59.00 on the Notice is for water and sewer for the period from September 01, 2018 to December 19, 2018. The Landlord, through the Translator, testified that the Tenant only had to pay a portion of the amount owing because of the start date of the tenancy.

The Landlord, through the Translator, testified that the Tenant was given a written demand for utilities with a deadline for payment of June 03, 2019. The Landlord, through the Translator, testified that the demand was given August 04, 2019. The Landlord, through the Translator, testified that the demand was sent through "WeChat". The demand was not submitted as evidence. The utility bill was not submitted as evidence, the Landlord only submitted a screenshot of her account details.

The Tenant testified that she was given a written demand in person, not through "WeChat". She took issue with the utilities for two reasons. First, the demand did not provide a deadline by which to pay the utilities. Second, the Tenant did not agree with the amount owing. The Tenant testified that the bill was for July to November. The Tenant acknowledged that some amount would be owing for utilities for this period but did not know what amount. The Tenant acknowledged receiving the demand last year but could not recall the date.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent when it is due under the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent or utilities. The relevant portions of section 46 state:

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...

(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.

...

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

There is no issue the Tenant received the Notice December 02, 2019. The Tenant disputed the Notice December 09, 2019, within the five-day time limit taking into account the weekend.

It is the Landlord who has the onus to prove the Notice pursuant to rule 6.6 of the Rules of Procedure.

There is no issue that the Tenant did not pay the rent increase amount in December. The issue is whether the rent increase is enforceable given it was sent to the Tenant through "WeChat".

The parties disagreed about whether they communicated regularly through “WeChat” when the Notice of Rent Increase was sent. I am not satisfied the Landlord has proven that the parties did given the Landlord did not submit documentary evidence supporting this position.

Part 3 of the *Act* addresses rent increases and states in section 42(2) that the Landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase” (emphasis added).

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89...that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways...

Section 88 then outlines the permissible forms of service. Sending a document electronically through “WeChat” is not a form of service permitted by the *Act*.

I accept that the Notice of Rent Increase was not properly served on the Tenant. I note that it is open to an arbitrator to find service sufficient even when a document is not served in accordance with sections 88 and 89 of the *Act* pursuant to section 71(2) of the *Act*. However, I decline to do so in this case. The Landlord should have served the Notice of Rent Increase properly. The Tenant has raised this as an issue. It is the Landlord who has the onus to prove the Notice is valid, which includes proving the Tenant failed to pay rent as required. I am not satisfied the rent increase was enforceable December 01, 2019 given the Notice of Rent Increase was not properly served on the Tenant.

Given the above, I am not satisfied the Tenant failed to pay rent as required for December. Therefore, I am not satisfied the Landlord was entitled to serve the Notice for non-payment of rent.

In relation to the utilities, the parties disagreed about what amount was payable for the first portion of the tenancy agreement. The parties disagreed about how the demand was sent to the Tenant. The parties disagreed about whether the demand included a deadline for payment. The parties disagreed about what period the bill was for. The Landlord did not submit a copy of the actual bill. I am not satisfied the Tenant owed the Landlord \$59.00 for utilities given the absence of the actual bill. I am not satisfied the

Landlord complied with section 46(6) of the *Act* in the absence of the written demand in evidence. In the circumstances, I am not satisfied the Landlord was permitted to serve the Notice pursuant to section 46(6) of the *Act*.

In the circumstances, the Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 08, 2020

Residential Tenancy Branch