



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, OLC, OPR, MNR, MNDCL, FFL

Introduction

This hearing was scheduled to deal with cross applications at 11:00 a.m. on today's date, via teleconference call. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, and orders for repairs and compliance. The landlord applied for an Order of Possession for unpaid rent and utilities and a Monetary Order for unpaid rent and utilities. The landlord subsequently filed an Amendment to include loss of rent and utilities for subsequent months and anticipated losses with respect to damage and removal of the tenant's possessions.

The tenant did not appear at the hearing despite leaving the teleconference call open for approximately 45 minutes. The landlord confirmed that he received the tenant's Application for Dispute Resolution, although it was improperly served to his teenaged son, and pointed out there was not evidence or materials included with the tenant's package. I noted that the tenant had not submitted any evidence to the Residential Tenancy Branch either. Since the tenant failed to appear for the hearing, I dismissed her application without leave to reapply.

As for service of the landlord's Application for Dispute Resolution, Amendment, and evidentiary materials, the landlord submitted two registered mail receipts and testified that the landlord's proceeding package and his originally submitted materials were sent to the tenant at the rental unit on January 24, 2020 and the Amendment and additional materials were sent to the tenant on February 20, 2020. The tenant has not picked up either of the registered mail packages. The landlord testified that he received communication from the tenant approximately two weeks ago whereby she indicates that she continues to reside in the rental unit.

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if they refuse to accept or pick up their mail. Pursuant to

section 90 of the Act, I deemed the tenant to be served with the landlord's materials five days after mailing and I continued to hear from the landlord without the tenant present.

It is important to note that I did not consider all of the landlord's monetary claims in this proceeding. I have considered the landlord's claims for unpaid and/or loss of rent up to and including the current month; and, utilities that were demanded on January 31, 2020. The remainder of the landlord's claims were not addressed as they were anticipatory, and I have dismissed those claims with leave to reapply.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and utilities, and if so, how much?

Background and Evidence

The landlord submitted a copy of a written tenancy agreement that indicates a tenancy started on November 4, 2016 and the monthly rent was set at \$1,800.00 payable on the first day of every month. The agreement also indicates that the tenant is also required to pay 60% of the gas and electricity bill for the property. The tenancy agreement indicates the tenancy would end and the tenant would vacate the property on April 30, 2017; however, the landlord testified that the parties agreed to extend the term of the tenancy for another one year fixed term and then continued the tenancy on a month to month basis. The landlord testified that the extensions were put in writing; however, he did not provide me with a copy of the document extending the fixed term or any other written tenancy agreement executed by the parties.

The monthly rent was set to increase to \$1,875.00 starting November 1, 2017; however, the landlord testified that the increase was not actually paid until January 1, 2018. The monthly rent was set to increase to \$1,900.00 starting November 1, 2017; however, the landlord testified that the increase was not actually paid until January 1, 2018. The monthly rent was set to increase to \$1,950.00 starting November 1, 2019; however, the landlord testified that he agreed to wait until January 1, 2020 for the increase to take effect.

The landlord received only \$1,215.00 toward the rent due for December 2019 rent. The landlord did not receive a rent payment for January 2020 on or before January 1, 2020

and on January 5, 2020 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") on the door of the rental unit.

The 10 Day Notice is in the approved form and is duly completed. The 10 Day Notice indicates the tenant failed to pay rent of \$685.00 for December 2019 and \$1,950.00 for January 2020. The 10 Day Notice also indicates utilities of \$201.00 were demanded on December 7, 2019 and \$111.00 was demanded on January 5, 2020 and still outstanding when the 10 Day Notice was issued.

The tenant filed to dispute the 10 Day Notice; however, I dismissed the tenant's application due to her failure to appear at the hearing. The landlord seeks to regain possession of the rental unit as soon as possible.

After serving the tenant with the 10 Day Notice, the landlord received a cheque from the government on behalf of the tenant in the amount of \$1,215.00 on January 22, 2020 that he accepted "for use and occupancy". The landlord has not received any other monies from or on behalf of the tenancy since then.

The landlord seeks to recover the balance of rent owed for December 2019 and January 2020; and, loss of rent for February 2020 and March 2020 since the tenant continues to occupy the rental unit. I noted that the Notices of Rent Increase included as evidence appear to show that the landlord increased the monthly rent by more than the allowable amount. The landlord acknowledged that he did not have the tenant's written consent or the pre-approval of the Director to increase the rent by more than the annual allowable amount.

The landlord also seeks to recover the utilities that were demanded on December 7, 2019 and January 5, 2020; and \$208.00 and \$119.00 for Fortis and Hydro that was demanded of the tenant on January 31, 2020.

The landlord's evidence included copies of the following materials: the tenancy agreement; Notices of Rent Increase; the 10 Day Notice; utility bills and emailed demand for utilities; and, the receipt issued for use and occupancy.

Analysis

Section 46(5) of the Act provides that where a tenant receives a 10 Day Notice, the tenant has five days to dispute the 10 Day Notice or pay the outstanding rent. In this case, the tenant filed to dispute the 10 Day Notice but did not appear for the hearing to establish a basis for cancelling the 10 Day Notice and I dismissed her application.

Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have dismissed the tenant's application to cancel the 10 Day Notice. Upon review of the 10 Day Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Although the landlord was premature in including unpaid utilities on the 10 Day Notice because he demanded payment for the utilities less than 30 days prior to issuance of the 10 Day Notice, I am satisfied that rent remained outstanding. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession. The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

As for the landlord's request for unpaid rent, I note that the landlord's rent increases exceeded the annual allowable amounts. Section 40 through 43 of the Act provide for the permissible way to increase the rent. Without the tenant's written consent or pre-approval from the Director, the landlord must not increase the rent by more than the annual allowable rent increase as set out in the Residential Tenancy Regulations. The Notice of Rent Increase must be given in the approved form and with at least three full months of advance notice. Where a tenant pays a rent increase that is non-compliant, section 45(3) of the Act provides that the tenant may deduct the overpayment from rent or otherwise recover the overpayments.

The landlord acknowledged he did not have the tenant's written consent or the authorization of the Director to exceed the annual allowable rent increase. As such, the landlord was required to limit the rent increase to no more than the following:

For increases in 2017: 3.7%
 For increases in 2018: 4.0%
 For increases in 2019: 2.5%
 For increases in 2020: 2.6%

Increasing the rent from \$1,800.00 to \$1,875.00 is an increase of 4.167%. The landlord testified that the tenant started paying the increased amount January 1, 2018. As such, the increase to \$1875.00 exceeds the annual allowable amount and the Notice of Rent Increase is invalid, meaning the monthly rent obligation for 2018 remained at \$1,800.00.

The subsequent Notices of Rent Increase were based upon an incorrectly increased amount from the previous year(s) and also exceed the annual allowable amount. Thus, I find the subsequent Notices of Rent Increase were invalid and the monthly rent payable by the tenant remained at \$1800.00 in 2019 and 2020.

Based on the landlord's submissions, and starting with the first rent increase, I calculate the rent owed to the landlord, after considering the payment of the non-compliant rent increases, when the 10 Day Notice was issued on January 5, 2020 was as follows:

Period of time	Rent obligation	Rent paid	Rent owed/(overpaid)
January 2018 – December 2018	\$1,800 x 12 months = \$21,600.00	\$1,875 x 12 months = \$22,500.00	(\$900.00)
January 2019 – December 2019	\$1800 x 12 months = \$21,600.00	\$1,900 x 11 months + \$1,215.00 paid for December 2019 = \$22,115	(\$515.00)
Balance as of December 31, 2019			(\$1,415.00)
January 1, 2020	\$1,800.00	0.00	\$385.00

Although the tenant had overpaid rent in 2018 and 2019, the sum of overpayments was insufficient to cover the rent for January 2020. As such, I find that the tenant had a shortfall of \$385.00 when the 10 Day Notice was issued and she did not pay the

shortfall within five days of receiving the 10 Day Notice. Rather, a payment was not issued until January 22, 2020 which is well beyond the five day limitation period.

I have applied the \$1,215.00 payment made on January 22, 2020 to the balance of rent owed for January 2020 and the remainder applied toward the loss of rent of February 2020.

With this decision I have awarded the landlord loss of rent for February 2020 and March 2020 since the tenant continues to occupy the rental unit. The amount of the loss is \$1,800.00 for each of these months.

As for utilities, the tenancy agreement does provide that the tenant is to pay 60% of the hydro and gas bills. The landlord provided copies of the utility bills for the relevant periods of time and I grant his request to recover \$201.00 that was demanded on December 7, 2019, \$111.00 for gas demanded on January 5, 2020, \$208.00 for hydro \$119.00 owed for Fortis demanded on January 31, 2020. The sum of these amounts is: \$639.00.

The landlord's claim had merit and I further award the landlord recovery of the \$100.00 filing fee paid for this application.

The landlord did not seek authorization to retain the security deposit and it remains in trust to be administered in accordance with the Act.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent as of January 1, 2020	\$ 385.00
Payment: January 22, 2020	(1,215.00)
Loss of rent for February 2020	1,800.00
Loss of rent for March 2020	1,800.00
Utilities owed up to January 31, 2020	639.00
Filing fee	<u>100.00</u>
Monetary Order for landlord	\$3,509.00

Conclusion

The tenant's application is dismissed without leave.

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is provided a Monetary Order in the sum of \$3,509.00.

The landlord's claims for loss of rent after March 2020, utilities for the period after the demand of January 31, 2020; and, any losses for cleaning, damage and removal of the tenant's possessions are dismissed with leave.

The security deposit remains in trust for the tenant to be administered in accordance with the Act.

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: March 10, 2020

Residential Tenancy Branch