



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LAT, MNDCT, RR, RP, OPT, PSF, LRE, ERP, FFT

Introduction

On March 17, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking monetary compensation pursuant to Section 67 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order of Possession pursuant to Section 54 of the *Act*, seeking provision of services or facilities pursuant to Section 62 of the *Act*, seeking to set conditions on the Landlord’s right to enter pursuant to Section 62 of the *Act*, seeking an emergency repair Order pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing and evidence package to Landlord by posting it to his door; however, she is not sure when she did this. The Landlord confirmed that he received this package about “a month ago” and he did not take any issue with how it was served. He also advised that he did not receive the Tenant’s evidence; however, he stated that it was fine to proceed without it. Based on this undisputed testimony, I am satisfied that the Landlord has been served the Notice of Hearing package. Furthermore, I have accepted the Tenant’s evidence and will consider it when rendering this decision.

The Landlord advised that his friend emailed his evidence to the Residential Tenancy Branch as he “had no idea how to do it.” However, as no evidence was submitted to the

Residential Tenancy Branch or served to the Tenant in accordance with the requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord did not provide any documentary evidence for this file.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant's Application with respect to the Notice. I find it important to note that the Tenant's request for an Order of Possession was dismissed without leave to reapply as she still maintains possession of the rental unit. Furthermore, her request for an emergency repair Order is dismissed without leave to reapply as this matter was dealt with in the April 21, 2020 Decision (the relevant file number is listed on the first page of this decision). The Tenant's other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the Landlord did not start this tenancy with a written tenancy agreement, as required by law. So, this tenancy was started as an unwritten, month to month tenancy. While the Landlord stated that the tenancy started on September 1, 2017, the Tenant stated that it started on August 15, 2017. They agreed that rent was established at \$1,300.00 per month and was due on the first day of each month. A security deposit of \$650.00 was also paid.

The Landlord advised that the Notice was served to the Tenant on March 2, 2020 by placing it in her mailbox. He stated that it was served because of rent arrears that was due on March 2, 2020. The amount listed as outstanding on the Notice was \$3,900.00 and he stated that the Tenant did not pay January, February, or March 2020 rent. It also indicated that the effective end date of the tenancy was March 12, 2020. He also advised that no rent has been paid since service of this Notice.

He stated that he asked her for the rent on January 23 and January 26, 2020 by text, but the Tenant did not answer. On February 22, 2020, he stated that he would give her until February 26, 2020 to pay the rent and she advised that she would bring him cash, but he stated that he would only accept the "full amount".

The Tenant made reference to a previous Decision dated December 17, 2019 where the Arbitrator indicated the following:

I therefore direct the landlord to either provide the tenant with a key to the mailbox within 10 days of the date of this order or to provide the tenant with her own mailbox, suitably located and labelled.

If the landlord fails or refuses to carry out the terms of this order, I direct that the tenant may deduct \$100.00 monthly from her rent commencing January 1, 2020 and continuing the first of each month thereafter.

She advised that the Landlord did not adhere to this Decision within 10 days of this order, and therefore, her rent should be \$1,200.00 per month from January 1, 2020 onwards. She referenced her text messages, submitted as documentary evidence, to

support her position that she had been attempting to pay the rent, but the Landlord had been refusing to accept it. She texted the Landlord on January 1, 2020 advising that she will give the Landlord \$1,200.00 based on the Landlord's non-compliance with this December 17, 2019 Decision. On January 5, 2020, the Landlord texted her for January 2020 rent, and she replied that she texted him on January 1 and 3, 2020 to give him the rent but he did not respond. She then requested that he have a receipt ready for \$1,200.00 and the Landlord replied with "1300 made your receipt". The Tenant then responded that rent was \$1,200.00 based on the order of December 17, 2019. On January 10, 2020, the Tenant texted the Landlord again asking if he wanted the rent and the Landlord replied, "Bring full rent as I have talked to rental tenancy board they told me you can't do it", to which the Tenant reiterated that her position is that rent is \$1,200.00 per month.

On February 2, 2020, the Tenant texted the Landlord asking if he wanted January and February 2020 rent in the amount of \$1,200.00 for each month. On March 3, 2020, the Tenant texted the Landlord stating that she has attempted to pay him the rent for each month, but she needs a receipt for \$1,200.00. On March 4, 2020, she texted the Landlord advising him that she has been trying to pay him the rent for the last three months, in the amount of \$1,200.00, and he has refused to accept it, but instead he served the Notice. On March 5 and March 6, 2020, she texted the Landlord advising him that she has \$3,600.00 for rent for the last three months but she requires receipts in the proper amounts. She stated that she has always paid the rent in cash and she had made attempts to pay the rent, with a witness; however, the Landlord would never come to the door.

The Landlord advised that he received the December 17, 2019 Decision after Christmas and he put up the mailbox on January 1, 2020. Therefore, the rent should be \$1,300.00 per month. He stated that the Tenant is being dishonest and has never come to him to pay the rent. He submitted that he did not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent in January or February 2020 because he "did not know" about this form until his friends told him about it. However, he did contradictorily acknowledge that he served the Tenant with this type of notice in December 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on March 2, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on March 2, 2020, she must have paid the rent in full by March 7, 2020 or disputed the Notice on Monday March 9, 2020 at the latest, and she disputed the Notice on March 7, 2020. The crux of this dispute is whether or not the rent has been paid. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, where the Landlord claims that the Tenant has refused to pay the rent, I find that the Landlord bears the burden of proof for this.

Given the contradictory testimony and position of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

While it was the Landlord's position that the Tenant was simply refusing to pay the rent for January, February, and March 2020, when he was questioned why he did not serve her with a 10 Day Notice to End Tenancy for Unpaid Rent in January or February, he stated that it was because he did not know about this notice until he was informed of it by his friends. However, I find the Landlord to be entirely untruthful on this point as he had previously served this same notice to the Tenant in December 2019. As it is

obvious that he was already aware of his right to use a 10 Day Notice to End Tenancy for Unpaid Rent to demand rent owing from the Tenant, if the Landlord had truly believed that the Tenant was refusing to pay the rent, it is not clear why he would not have served this Notice in January or February 2020.

Furthermore, it was his initial position that the \$100.00 rent reduction should not apply to January 2020 rent as he had complied with the order in the December 17, 2019 Decision. He then contradictorily stated that it was his belief that the \$100.00 rent reduction only applied to January 2020 rent. However, I find this claim to be dubious as he did not dispute his text on January 5, 2020 informing the Tenant that he would have a receipt for her in the amount of \$1,300.00.

Based on these contradictory submissions, I find that the Landlord's testimony is not reliable or truthful. The inconsistencies in his statements clearly demonstrate his attempts at suggesting different, continually changing explanations of his actions in an effort to portray alternate scenarios from the truth. However, it is clear that while creating these explanations, he has contradicted his own testimony by providing conflicting accounts. As a result, I give no weight to the truthfulness of his submissions, and I prefer the Tenant's evidence on the whole.

Ultimately, I am satisfied from the undisputed evidence that the Landlord did not comply with the December 17, 2019 decision by "either provid[ing] the tenant with a key to the mailbox **within 10 days of the date of this order** or [providing] the tenant with her own mailbox, suitably located and labelled". Therefore, based on this Decision, the Tenant has been directed to "deduct \$100.00 monthly from her rent commencing January 1, 2020 and continuing the first of each month thereafter."

In addition, I am satisfied that the Tenant had been making attempts to pay the Landlord \$1,200.00 in January, February, and March 2020 as per the terms of her tenancy agreement and pursuant to the December 17, 2019 Decision; however, it is the Landlord that had been refusing to accept those payments because he wanted \$1,300.00 instead.

I find it important to note that, later in the hearing, the Landlord acknowledged that he was not accepting the Tenant's rent payments of \$1,200.00, but then stated "fine, fine, rent \$1,200.00".

As I am satisfied that the Tenant had been contacting the Landlord and attempting to pay him this amount each month, but it was the Landlord's refusal to accept this

amount, I find that the Notice is not valid. Therefore, the Notice of March 2, 2020 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent of March 2, 2020 to be cancelled and of no force or effect. This tenancy continues until ended 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: April 25, 2020

Residential Tenancy Branch