



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, RP

Introduction

On September 6, 2020, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2020. The Tenants also applied for a monetary order for money owed or compensation for damage or loss, for an order for the Landlord to repair the rental unit, and for a rent deduction to deduct the cost of repairs services or facilities from the rent.

The matter was set for a conference call hearing. The Tenants and Landlords attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending due to a breach of the tenancy agreement and Act regarding payment of rent.

The Tenants' other claims are dismissed with leave to reapply.

Issues to be Decided

- Is the tenancy ending due to a breach of the Act and tenancy agreement regarding payment of rent?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on June 1, 2020 and is on a month to month basis. Rent in the amount of \$1,200.00 is due to be paid to the Landlord each month. The Tenant submitted that rent is due on the first day of the month and the Landlord submitted that rent is due on the last day of each month.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2020, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice by posting it on the Tenants' door on September 3, 2020. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$2,400.00 of which \$1,200.00 was due on July 31, 2020 for August rent and another \$1,200.00 which was due on August 31, 2020 for September rent. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Landlord testified that the Tenants did not pay the rent due under the tenancy agreement within 5 days of them receiving the 10 Day Notice.

The Landlord testified that he has not received any rent owing under the tenancy agreement since the 10 Day Notice was issued. The Landlord testified that he is not

aware of any legal reason which permitted the Tenants' to not pay the rent owing under the agreement.

The Landlord wants to end the tenancy and wants an order of possession for the rental unit.

The Tenant testified that he received the 10 Day Notice on September 4, 2020 and disputed the Notice on September 6, 2020; within the required time period.

In response to the Landlord, the Tenant testified that the Landlord, Mr. S.R. agreed that the Tenant could reduce the rent for August 2020 by \$300.00 due to spoiled food in the refrigerator. The Tenant testified that the Landlord informed him to leave \$900.00 in cash on the dryer. The Tenant testified that he left \$900.00 on the dryer. The Tenant testified that he received a receipt from the Landlord for the \$900.00 payment.

In reply, the Landlord testified that the Tenant was not permitted to reduce rent by \$300.00. The Landlord testified that the Tenant informed him that he could only pay \$900.00 towards August 2020 rent. The Landlord asked the Tenant to leave the cash payment on the dryer and the Tenant asked that he be provided with a receipt. The Landlord stated that he left a receipt for \$900.00 on the dryer prior to receiving the cash payment. The Landlord testified that he did not find \$900.00 on the dryer and he has not received the \$900.00 cash payment.

After the Tenant received the 10 Day Notice, the Tenant testified that on September 8, 2020 he attempted to pay the rent to Mr. S.R. who refused to accept it and directed him to pay Mr. B.M. The Tenant testified that he did not pay Mr. B.M. the rent owing for September 2020 rent because when he offered to pay the rent Mr. B.M. was refusing to issue him a rent receipt. The Tenant provided a copy of a video recording dated September 5, 2020 where the Landlord, Mr. S.R. directed the Tenant to pay rent to Mr. B.M.

The Tenant testified that on September 24, 2020 there was a flood in the rental unit due to a crack in the foundation of the house. The Tenant testified that the Landlord refused to deal with the flood issue, so the Tenant arranged for the emergency repair and paid \$3,259.00 for the repair cost. The Tenant testified that the Landlord said he did not care about the flood and would not fix it. The Tenant provided a video recording of water in the rental unit.

The Tenant testified that he did not pay the rent owing for October 2020 because of the flood that occurred on September 24, 2020 and because the Tenant paid for the repair cost. The Tenant testified that he gave a copy of the invoice for repair to Mr. B.M.

The Tenant submitted that he should be able to deduct the amount he paid for repairs from the unpaid rent owing to the Landlord.

In reply, the Landlord testified that he served the Tenant the 10 Day Notice on September 3, 2020. The Landlord testified that the Tenant never came to him and attempted to pay the September 2020 rent and there was not an incident where the Landlord refused to issue a September rent receipt.

The Landlord testified that Mr. S.R. refused to repair the rental unit because the Tenant had not paid the rent. He testified that the Landlord received the invoice for repair in the Tenants disclosure evidence for this hearing.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings;

With respect to August 2020 rent, the Landlord testified that he issued a receipt and the Tenant provided a copy of a receipt which I find to be the better evidence that \$900.00 was paid the Landlord on or about July 23, 2020. With respect to the remaining \$300.00 owing for August 2020 rent, the parties disagree on whether the Tenant was permitted to reduce the rent by \$300.00 for spoiled food. I have reviewed the documentary evidence before me, and I find that there is insufficient evidence from the Tenant to prove that he was permitted to reduce August 2020 rent by \$300.00. I find that August 2020 rent was not paid in full within 5 days of the Tenant receiving the 10 Day Notice on September 4, 2020. It appears to me that if the Landlord had approved of the \$300.00 deduction, the 10 Day Notice would have indicated rent owing of \$900.00 for August 2020.

With respect to September rent, I find that the Tenants have not paid September 2020 rent.

I accept the Tenant's testimony that he received the 10 Day Notice on September 4, 2020 that was posted to his door. I find that the Tenant had until September 9, 2020 to pay the rent owing under the tenancy agreement for September 2020.

I accept the Tenants' video evidence that on September 5, 2020 he approached Mr. S.R. and attempted to pay him the September 2020 rent, and he was directed to instead pay Mr. B.M.

The Tenant explanation that he refused to pay the rent because Mr. B.M. refused to issue a receipt is not very compelling. The Landlord had previously issued the Tenant a receipt for a cash payment. There is insufficient evidence from the Tenant that he made any further attempts to pay the September rent to the Landlord. I find that it is not reasonable for the Tenant to simply not make any further effort to pay the rent owing.

With respect to October 2020 rent, I find that the 10 Day Notice was issued due to unpaid August and September 2020 rent. Unpaid October rent does not form part of the basis of the 10 Day Notice. While the Tenant may be entitled to deduct the amount he paid for emergency repairs from rent owing in accordance with section 33 (7) of the Act, this does not have any impact on whether or not the Tenant failed to pay rent owing back in August 2020 and September 2020.

While I acknowledge that the Tenant has monetary claims against the Landlord and may be entitled to monetary compensation for money owed or damage or loss, the matter before me is limited whether or not the rent due under the tenancy agreement was paid within 5 days of the Tenant receiving the 10 Day Notice. The Tenant has leave to reapply for his monetary claims.

I find that the Tenant failed to pay all the rent due under the tenancy agreement within five days of receiving the 10 Day Notice.

I find that the Tenant did not have a legal right under the Act to withhold payment of the August and September 2020 rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notice dated September 3, 2020.

Under section 55 of the Act, when a Tenants Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The Landlord is granted an order of possession effective two (2) days after service on 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 27, 2020

Residential Tenancy Branch