



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, OT, FFT

Introduction

On September 14, 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 a repair Order pursuant to Section 32 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 in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by hand to the Landlord on or around September 24, 2020 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package.

The Tenant advised that he served his photographic evidence to the Landlord via text message, but he was not sure when. The Landlord confirmed that he received these pictures as the only evidence that the Tenant served. In addition, he advised that the method of service of this evidence did not comply with the *Act*. As this evidence was not served in a method in accordance with Section 88 of the *Act*, I have excluded the Tenant’s evidence and will not consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant on November 9, 2020 by posting it to the Tenant’s door. The Tenant confirmed that he received this evidence, but he is not sure when. He advised that he took no position on when or how it was served. Based on the undisputed testimony, I am satisfied that the Tenant has been

served the Landlord's evidence. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

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 and the 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.

The Landlord advised that the tenancy started on May 10, 2018 and that there was a verbal agreement that rent was established at \$650.00 per month to start, but would increase to \$700.00 once certain renovations were completed. He claimed that he never wanted to rent to the Tenant in the first place, so he did not have a written tenancy

agreement, as required by the *Act*. He referenced a text message dated October 29, 2018, that was submitted as documentary evidence, and indicated that this was his method of informing the Tenant that rent was to be owed in the amount of \$700.00 in December 2018. He stated that there were many texts to the Tenant informing him that rent was due; however, he could not directly answer if he had ever told the Tenant at any point that \$700.00 was the new rent, or when it was due. In fact, the Landlord did not even have an understanding of what day of each month rent was supposed to be paid on. He claimed that he never pursued any action against the Tenant for any unpaid rent in the past as the Tenant was aggressive and the police were called on at least one occasion. As well, he advised that the Tenant did not pay a security deposit.

The Tenant confirmed that a written tenancy agreement was never offered by the Landlord. He advised that they had a verbal agreement for rent to be set at \$620.00 per month and this is supported by the Landlord handwriting in a note on the Notice that said, "Rent for Sept. 620". He refuted that there was any agreement that rent would increase to \$700 at any point. He stated that he did not have any idea what day rent was required to be paid as the Landlord never established this. He confirmed that he did not pay a security deposit at the start of the tenancy but paid \$310.00 for a security deposit, along with rent payments, on September 13, 2020.

The Landlord advised that the Notice was served to the Tenant by hand on September 10, 2020 and the Tenant confirmed that he received this. The Landlord advised that he served the Notice because \$2,570.00 was in arrears and was due on September 1, 2019. Handwritten on this Notice were items and amounts of money that were not related to unpaid rent. He was given multiple opportunities to explain how he came up with this amount of rent arrears that was apparently due over a year ago.

Despite the Landlord originally stating that rent was verbally agreed to be set at \$650.00 until renovations were completed, when explaining how he arrived at \$2,570.00 in arrears for September 1, 2019, he claimed that the Tenant owed for four months of rent at \$620.00 per month. He advised that those four missed rent payments were for May 2018, November 2018, April 2019, and September 2019. While this totalled \$2,480.00, he could not explain how he came to the figure that \$2,570.00 was owed by the Tenant on September 1, 2019. The effective end date of the tenancy was noted on the Notice as September 21, 2020.

The Tenant advised that he was confused by the amount of rental arrears that the Landlord indicated on this Notice. He stated that he has asked the Landlord to explain what months of rent are allegedly outstanding; however, the Landlord has neglected to

confirm this with him. He stated that he paid the Landlord two months of rent plus the amount equivalent to a security deposit, totalling \$1,550.00, on September 13, 2020.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

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. The undisputed evidence before me is that the Tenant received the Notice on September 10, 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 September 10, 2020, the Tenant must have paid the rent in full or disputed the Notice on September 15, 2019 at the latest. However, the undisputed evidence is that the Tenant did not pay the amount on the Notice by September 15, 2020, but he did make this Application on September 14, 2020.

When assessing the Tenant's request to dispute the Notice, I find it important to note that the Landlord was disorganized and had very few details pertinent to this tenancy. Clearly the Landlord managed this tenancy in a manner with little care or consideration. He stated that the reason he did not have a written tenancy agreement was because he did not even want to rent to the Tenant in the first place. I do not find that this logic or

reasoning makes sense as it is not clear to me why he would even then engage in a tenancy with a person that he did not want to rent to.

I note this because having a written tenancy, which is required by the *Act*, would establish the basic parameters of the tenancy. However, without this, the parties can only rely on their testimony and any verbal agreements that may have happened. Even though the Landlord initially submitted that rent was agreed upon at \$650.00 per month, I find that there is little evidence to support this. Furthermore, in his testimony regarding his calculations for the \$2,570.00 owing on the Notice, he even calculated that based on \$620.00 per month. As such, I am satisfied that rent was more likely than not established at \$620.00 per month from the start of the tenancy. Moreover, there is insufficient evidence before me that there was ever a verbal agreement that rent would be increased to a specific amount at a specific point in time.

Another concerning issue without a written tenancy agreement is what day each month rent is required to be paid. The tenancy started on May 10, 2018, but the Landlord could not answer what day rent was expected to be paid each month and the Tenant had no idea either. Furthermore, there is no evidence before me that at any point throughout the tenancy, that he ever advised the Tenant that rent was to be paid on a specific date each month. The Tenant submitted that he simply paid the rent whenever he was paid at his job.

In reviewing the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*, I am not satisfied that the Notice meets all of the requirements of Section 52.

Firstly, the Notice must indicate the reason for ending the tenancy and while the Landlord indicated that \$2,570.00 was in arrears, he could not provide any evidence to prove that this specific amount was outstanding. The amount that the Tenant is allegedly in arrears stems from the start of the tenancy over two years ago, and the Landlord indicated that this was owed on September 1, 2019. If this were the case, it is not clear to me why he would only serve the Notice on September 10, 2020, a full year after it was owed. Given that the Landlord provided conflicting testimony on how much rent was established at, I do not find his accounting, testimony, management, or submissions to be reliable or accurate. While the Tenant may be in arrears some rent, as the Landlord could not explain how \$2,570.00 was in arrears and as it was not clear to the Tenant how this specific amount was arrived at, I am not satisfied that the Tenant could have understood exactly how much rent was owed, if any.

Secondly, the Landlord has made no effort to establish when rent was actually due each month. As neither party could speak to a specific due date for rent each month, I am not satisfied that the Notice is valid as the Landlord has done very little to establish that rent was owed on the first day of each month.

As I am not satisfied that the Landlord's Notice is valid, I find that the Notice of September 10, 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 deduct 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 or Utilities of September 10, 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: November 17, 2020

Residential Tenancy Branch