



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: OPR-DR, OPRM-DR, FFL

Tenant's application: CNR, FFT

Introduction

On September 11, 2020 the landlord applied for an Order of Possession with respect to a 10 Day Notice to End Tenancy for Unpaid Rent posted on the rental unit door on September 2, 2020 and a Monetary Order for unpaid rent under the Direct Request procedure. A proceeding package was generated on September 16, 2020 and the landlord sent the proceeding package to each tenant via registered mail on September 17, 2020. The registered mail was delivered on September 18, 2020. An adjudicator reviewed the landlord's application and ordered the matter be sent to a participatory hearing to deal with the following, as provided in the Interim Decision dated September 22, 2020:

"The residential tenancy agreement submitted by the landlord indicates that from May 1, 2020 to August 31, 2020 the monthly rent will be \$1,100 and that from September 1, 2020 to April 30, 2020 the monthly rent will be \$1,400.00.

In a Direct Request Proceeding, I find I am not able to confirm whether this change in rent was intended as a reduction from May 2020 to August 2020, or as an increase effective in September 2020.

I find that I am not able to confirm the amount of the monthly rent and that this fact can only be clarified in a participatory hearing."

A Notice of Dispute Resolution Proceeding was generated on September 28, 2020 and provided to the landlord to serve to the tenants along with a copy of the Interim Decision in a manner that complies with section 89 of the Act.

On September 21, 2020 the tenant's agent filed an Application for Dispute Resolution seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent. In filing the tenant's Application for Dispute Resolution, the agent indicated the 10 Day Notice was received on September 21, 2020 in the mailbox but a copy of a 10 Day Notice was not provided. Rather, the tenant's agent uploaded a copy of the landlord's Notice of Dispute Resolution Proceeding – Direct Request.

Both parties appeared or were represented at the participatory hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Service of landlord's hearing documents

I explored service of the Landlord's Notice of Dispute Resolution Proceeding and Interim Decision. The landlord testified that he placed the Notice of Dispute Resolution Proceeding and Interim Decision, for each tenant, in the common mailbox on the property (the property has two living units on the property) that is located at the front of the house. The tenants denied receiving the Landlord's Notice of Dispute Resolution Proceeding or the Interim Decision. The tenants pointed out they do not ordinarily receive mail at the property and the mailbox is at the front of the house whereas their unit is located at the back of the house. Since leaving documents in the mailbox at the property is not a method of service available under section 89 of the Act, I found the landlord did not service the tenants with the Notice of Dispute Resolution Proceeding and Interim Decision as ordered.

I heard and confirmed that the landlord served additional evidence upon the tenant referred to by initials GT, in person, on November 2, 2020. Serving evidence upon a party in person is an acceptable method of service; however, the landlord did not serve each tenant.

I explored service of the Tenant's Application for Dispute Resolution. The tenant's agent testified that he sent the documents to the landlord, via registered mail on September 25, 2020, using the address of the rental unit even though the landlord does not reside in either unit on the property. The tenant's agent explained the landlord did not include a service address on the tenancy agreement so he did a title search of the residential property and saw the landlord's address in the land title system was listed as

being the rental unit address. The landlord pointed out that his service address was provided on the 10 Day Notice to End Tenancy for Unpaid Rent.

Having noted the tenants had not provided a copy of the 10 Day Notice in filing their Application for Dispute Resolution, I explored whether the tenants had received the 10 Day Notice dated September 2, 2020. Tenant IG confirmed that she found the 10 Day Notice on the rental unit door on September 2, 2020 after the landlord sent a text informing the tenant that he had done so. I asked IG to read the landlord's service address that appears on the 10 Day Notice, which she did, and I noted that it is the same address appearing on the 10 Day Notice provided as evidence by the landlord. The landlord acknowledged that he eventually did get the tenant's proceeding package although it was later than had the tenants served him using his service address. I found the tenants had been provided a service address for the landlord, in writing, by way of the 10 Day Notice and they did not send their proceeding package to the landlord's service address. Accordingly, the tenants did not serve the landlord in accordance with section 89 of the Act.

As provided above, I found that both parties failed to serve the other party with their Notice of Dispute Resolution Proceeding, and the Interim Decision, and evidence in manner required under section 89 of the Act. Rather than dismiss both applications due to improper service, I explored whether the parties were seeking resolution to this dispute during this hearing and the parties indicated they were. As such, even though both parties did not serve the other in manner that complies with the Act, I deemed both parties to have sufficiently given or received the other party's materials using the discretion afforded me under section 71(2)(b) of the Act.

In recognition that the tenants stated they had not received the Interim Decision, I read from the analysis section of the Interim Decision. The tenants confirmed that they understood the nature of the dispute concerned the amount of rent and the tenants were prepared to make submissions concerning the amount of the rent as to whether it had been discounted or set to increase.

2. Time limit for filing Tenant's Application for Dispute Resolution

A tenant in receipt of a 10 Day Notice to End Tenancy for Unpaid Rent has five days to either pay the outstanding rent or file an Application for Dispute Resolution to dispute it.

As stated previously, the tenants filed an Application for Dispute Resolution to seek cancellation of a 10 Day Notice indicating they received it on September 21, 2020;

however, Tenant IW confirmed receiving the 10 Day Notice on September 2, 2020. Accordingly, I find the tenants did not file to dispute the 10 Day Notice with five days of receiving it.

Section 66 of the Act permits me to grant an extension to file an Application for Dispute Resolution in “exceptional circumstances”. The tenants did not request an extension; however, in any circumstance, I may not grant an extension under section 66 where:

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The stated effective date on the 10 Day Notice is September 12, 2020. Considering the tenant acknowledged receipt of the 10 Day Notice on September 2, 2020, I find the stated effective date of September 12, 2020 complies with section 46 of the Act. As such, I find the tenant’s Application for Dispute Resolution was filed outside of the time limit for doing so and I may not extend the time limit because they filed after the effective date of the 10 Day Notice. Accordingly, I dismissed the tenant’s Application for Dispute Resolution due to failure to file the Application for Dispute Resolution within the time limit for doing so.

The tenant’s agent/advocate stated the tenant’s Application for Dispute Resolution was intended to be a response to the landlord’s Application for Dispute Resolution and that the tenants are of the view they paid the rent that was required of them. I have considered the tenant’s evidence with a view to determining whether the tenants had paid the rent that was due as a response to the landlord’s Application for Dispute Resolution.

3. Amendment of landlord’s monetary claim

In making the original Application for Dispute Resolution in September 2020 the landlord requested a Monetary Order for unpaid rent of \$300.00 for the month of September 2020. At the hearing, the landlord requested he be awarded a shortfall of \$300.00 per month for the months of September 2020 through November 2020 since the tenants have continued to occupy the rental unit and pay only \$1100.00 per month. Under Rule 4.2 of the Rules of Procedure, a claim may be amended during the hearing where:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The tenants acknowledged they continue to occupy the rental unit and have paid \$1100.00 per month toward rent while awaiting the outcome of this dispute.

In these circumstances, if find it is reasonably anticipated that the landlord would seek recovery of unpaid and/or loss of rent for the months following the filing of his original Application for Dispute Resolution and I permitted the amendment.

Issue(s) to be Decided

1. What is the amount of the monthly rent payable for September 2020 and onwards?
2. Did the tenants pay the monthly rent payable for September 2020 and onwards?
3. Is the landlord entitled to receive an Order of Possession for unpaid rent?
4. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?

Background and Evidence

The tenants responded to an advertisement for the rental unit and the tenancy formed on April 30, 2020 after the tenants met with the landlord in person and discussed and agreed upon terms of tenancy.

The tenancy agreement is for a fixed term set to expire on April 30, 2021.

As for the amount of the rent, the tenancy agreement reflects the following:

\$1100.00 from May 1, 2020 ~ Aug 31, 2020
\$1400.00 from Sept 1, 2020 ~ April 30, 2020

The tenancy agreement requires the tenants to pay a security deposit of \$700.00 and the tenants paid the \$700.00 security deposit on April 30, 2020.

The tenants paid rent in the amount of \$1100.00 for the months of May 2020 through August 2020.

On August 2, 2020 the tenants initiated a communication with the landlord seeking to have the rent remain at \$1100.00 per month for September 2020 onwards rather than increase to \$1400.00 because the university courses they are taking were exclusively online. The landlord did not agree with the tenants and responded that they had agreed to a reduced rent of \$1100.00 for the summer months, that the rent was not increasing but that it was going to its normal amount of \$1400.00 per month.

Several communications went back and forth between the parties and at no time did the landlord agree that the tenants may pay only \$1100.00 starting September 1, 2020.

For the month of September 2020, the tenants paid rent in the amount of \$1100.00 and on September 2, 2020 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit indicting the tenants failed to pay rent of \$300.00 on September 1, 2020. The tenant IW received the 10 Day Notice on the door on September 2, 2020. The tenants did not file to dispute the 10 Day Notice and did not pay the \$300.00 indicated on the 10 Day Notice.

Landlord's position

The landlord is of the position the rent was discounted for the months of May 2020 through August 2020. The landlord submitted that the he advertised the rental unit indicating a "Summer Special" that the tenants responded to. The landlord provided copies of advertisements in support of his position.

The parties met on April 30, 2020 and the parties discussed and agreed that the rent was \$1400.00 per month but that the rent would be \$1100.00 for the summer months only. The security deposit was set at \$700.00 since this is one-half of the monthly rent of \$1400.00.

Tenant's position

The tenants are of the position the landlord is attempting to unlawfully increasing the rent and circumvent the rent increase provisions of the Act that require a Notice of Rent Increase to be served, which was not. The tenants submit that discounting rent on a seasonal basis is more commonly seen in commercial tenancies but not residential

tenancies. Further, there is no basis to discount the rent on a seasonal basis because the university located near the rental unit offers courses all year long.

The tenants acknowledge discussing and agreeing to the lesser rental rate for the summer months only and the higher rental rate of \$1400.00 would start September 2020 onwards in entering into the tenancy; however, the tenants are of the position the tenancy agreement is non-compliant with the Act in several ways, including:

- Lack of standard terms
- Lack of a service address for the landlord
- The term reflecting the monthly rent is ambiguous and unclear so it is unenforceable
- The term providing for the monthly rent amounts to an unlawful rent increase so it is unenforceable

The tenants are of the position they lawful amount of rent remains at \$1100.00 per month, which they paid, so there is not a basis for ending their tenancy.

Both parties provided consistent statements that while awaiting the outcome of this dispute the tenants have continued to pay rent of \$1100.00 for the months of October 2020 and November 2020. The landlord requested an Order of Possession effective November 30, 2020 but would consider an Order of Possession for December 31, 2020 if the tenants paid the outstanding rent. The landlord requested a Monetary Order for the rental shortfall of \$300.00 per month for the months of September 2020 through November 2020.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 13 of the Act provides that a tenancy agreement must be in writing and must include certain terms. Upon review of the tenancy agreement executed by the parties, I accept the tenants' position that the tenancy agreement drafted by the landlord is non-compliant with section 13 in a number of ways including lack of "standard terms" and a service address for the landlord. While the tenancy agreement is deficient or non-compliant in a number of ways, it remains that I must make a determination as to the amount of the monthly rent. A deficient or non-compliant tenancy agreement does not mean the tenants are not required to pay any rent or they are at liberty to set the rent at

any amount and I recognize the tenants did not make such arguments. The tenancy agreement does provide a term with respect to the amount of rent payable, among other terms, and I proceed to further analyze the tenancy agreement with a focus to determining the amount of the monthly rent.

Section 13 of the Act requires that the amount of the rent be specified in the written tenancy agreement. The written agreement does provide for two different amounts of rent payable at different time frames, as described in the Background and Evidence section of this decision, and I find the amounts and the time frames to be worded in such a way they are sufficiently clear as to what amount needs to be paid and when. The issue that is the crux of this dispute is whether the monthly rent was discounted for the first four months (landlord's position) or set to increase from September 2020 onwards (tenant's position).

If the tenants agreed to a rent increase in writing, the landlord would still be required to meet the timing and form requirements of sections 40 through 43 of the Act, including issuance of a Notice of Rent Increase in the approved form. It is undisputed that the landlord did not serve the tenants with a Notice of Rent Increase. As such, if the landlord is attempting to increase the rent from \$1100.00 to \$1400.00 then he has not done so in accordance with the Act and rent would remain at \$1100.00.

The landlord argued the monthly rent was set at \$1400.00 but was discounted to \$1100.00 for the first four months. In support of that position the landlord pointed to the rental advertisements the tenants responded to and the security deposit.

The advertisements are entitled, in part:

\$1,100 / 2br - 700ft² - SUMMER SPECIAL: 2 BRs 1 Bath Suite

The body of the advertisement does not mention the monthly rent or indicate the monthly rent is anything different than \$1100.00; however, both parties agreed the parties had a discussion concerning the amount of rent when they met on April 30, 2020 and entered into a written tenancy agreement. Advertisements are generally an invitation to make an offer but is parol evidence that is not considered unless there is an ambiguous term. I find the advertisement does not serve to clarify whether the rent was discounted or set to increase. Accordingly, I do not give the advertisements much evidentiary weight.

As for the discussion that took place on April 30, 2020 neither party provided specific details as to the words used in their discussion. Rather, I was provided with more of a summary description of what was discussed and agreed upon. Neither party described the use of the word rent “increase” or “discount” in their testimony. As such, I find there is insufficient particulars or the oral discussion of April 30, 2020 provided to me that would provide clarity as to whether the rent was discounted or set to increase.

I find the best evidence of the agreed upon monthly rent is the tenancy agreement itself, which both parties executed, providing for a security deposit of \$700.00. The security deposit was set at and the tenants paid \$700.00 which is 50% of \$1400.00. Section 19 of the Act prohibits payment or collection of a security deposit in excess of 50% of the monthly rent. The tenants confirmed that in setting the security deposit at \$700.00 the landlord explained that it was based on the rental amount of \$1400.00. As such, I find the amount of security deposit is inconsistent with a monthly rent of \$1100.00 and is consistent with a monthly rent of \$1400.00.

While a landlord is precluded from increasing rent except where it complies with rent increase provisions of the Act, there is nothing in the Act that prohibits a landlord from discounting or accepting a lesser amount of rent. The landlord submitted he was willing and agreed to accept a lesser amount of rent for the first four months as a “summer special”. It is not uncommon for landlords to offer rental incentives to attract tenants. Rental incentives come in different forms, such as rental discounts, free rent for a period of time, or move-in allowances. I accept that a discount of \$300.00 per month for the first four months of tenancy only may be viewed as a rental incentive and a rental incentive does not translate into a permanent reduction or discount, unless the landlord agreed to that.

In keeping with all of the above, on a balance of probabilities, I find the monthly rent was set at \$1400.00 except for a brief and specific four month period of time where it was discounted to \$1100.00 per month. Therefore, I find the tenants were required to pay rent of \$1400.00 per month from September 1, 2020 onwards in accordance with section 26 of the Act and the tenants’ failure to do so put the landlord was in a position to serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on September 2, 2020, which he did, under section 46 of the Act.

From what I heard from the tenants is the landlord never did agree to the rental incentive or discount continuing past August 2020. As such, I find the tenants knew or ought to have known that the landlord expected payment of \$1400.00 on September 1, 2020 and they chose not to pay that amount. Then, upon receiving a 10 Day Notice

indicating failure to pay \$300.00 in rent the tenants did not pay the outstanding amount or file to dispute the 10 Day Notice within five days. Accordingly, I find the tenancy came to an end on September 12, 2020 due to unpaid rent.

Upon review of the 10 Day Notice, I find it am satisfied that it is in the approved form and is duly signed and completed, thereby meeting the form and content requirements of section 52 of the Act.

During the hearing, the landlord stated he was agreeable to an Order of Possession effective November 30, 2020 and I provide the landlord within an Order of Possession with that effective date. It shall be upon the landlord to decide whether he will not enforce the Order of Possession until a later date.

As for the landlord's monetary claim, I find I am satisfied the tenants were required to pay rent of \$1400.00 starting September 2020 and the tenants still owe the landlord \$300.00 in rent for that month. I further find the landlord has suffered a loss of rent of \$300.00 per month for the months of October 2020 and November 2020 since the tenants paid only \$1100.00 for each of those months. Therefore, I award the landlord unpaid and/or loss of rent of \$900.00 for the months of September 2020 through November 2020.

Since the landlord was successful in this application, I further award the landlord recovery of the \$100.00 filing fee.

In keeping with the above, I provide the landlord with a Monetary Order in the sum of \$1000.00 to serve and enforce upon the tenants.

Conclusion

The landlord is provided an Order of Possession effective November 30, 2020 and the landlord is provided a Monetary Order in the amount of \$1000.00.

The tenant's application to cancel a 10 Day Notice is dismissed in its entirety as they failed to file their Application for Dispute Resolution within the time limit for doing so.

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 25, 2020

Residential Tenancy Branch