



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERGULF DEVELOPMENTS
CORP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

On October 5, 2020, the Tenant submitted 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 October 2, 2020, and to recover the filing fee for their application. The matter was set for a conference call.

Two Property Manager (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at 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.

Issues to be Decided

- Should the 10-Day Notice be cancelled?
- If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?
- Is the Tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The tenancy agreement for this tenancy records that this tenancy began on October 1, 2018. The parties agreed that the current rent in the amount of \$1,178.00 is to be paid by the first day of each month, and the Landlord is holding a \$575.00 security deposit for this tenancy. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord.

The parties also agreed that the rent for April, May, June, July and August 2020 are outstanding for this tenancy in the amount of \$5,890.00 (the “Effectuated Rent”) and that this rent came due during the COVID-19 emergency order. The Landlord testified that they had issued two repayment plans to the Tenant, one on July 22, 2020, for the effectuated rent due between April 1, 2020, to July 1, 2020, for this tenancy. The Tenant testified that they did receive this payment plan. A copy of this payment plan was submitted into documentary evidence by the Landlord.

The Landlord testified that they issued the second repayment plan on September 4, 2020, for the effectuated rent due between April 1, 2020, to August 1, 2020, for this tenancy. The Tenant testified that they did receive this payment plan. A copy of this payment plan was submitted into documentary evidence by the Landlord.

The Landlords testified that the Tenant missed the first payment of the repayment plan, which was due on October 1, 2020, so they served the 10-Day Notice to end the tenancy due to non-payment of the effectuated rent instalment plan, to the Tenant on October 2, 2020, by posting the Notice to the Tenant’s front door. The 10-Day Notice has an effective date of October 12, 2020, and an outstanding rent amount of \$589.00. A copy of the Notice was submitted into documentary evidence by the Tenant.

The Tenant testified that they did pay the October 2020 rent in full, agreeing that they did not pay the first installment of the rent re-payment. The Tenant argued that both of the effectuated rent repayment plans issued by the Landlord did not comply with the *Act* and therefore were not enforceable to end their tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the parties agreed that the Landlord issued a Notice to end this tenancy due to the Tenant missing the first payment of a 10-month repayment plan for outstanding rent that came due during the COVID effected rent period between April 1 to August 1, 2020, for this tenancy.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*

(a) pay the overdue rent, in which case the notice has no effect,
or

(b) dispute the notice by making an application for dispute resolution.

(5) *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*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant was deemed to have received the 10-Day notice on October 5, 2020, three days after it was posted to the door of the rental unit, and that the Tenant did apply to dispute the Notice within the legislated timeline.

The Tenant has argued that the Notice to end tenancy is not valid as it is for non-payment of a improperly issued repayment plan, for rent due under the COVID-19

effected rent period between April 1 to August 1, 2020. The Tenant testified that the Landlord's repayment plans were not issued in accordance with the Act and therefore the Landlord's could not end the tenancy due to non-payment of these funds.

I accept the agreed-upon testimony of both parties that the Landlord issued the first of two repayments plans to the Tenant on July 22, 2020. The July 22, 2020 repayment plan, covered rent due between the period of April 1 to July 1, 2020, listing the due date of the first instalment of this payment plan on October 1, 2020, in the amount of \$472.00.

Section 3 of the *COVID-19 (RESIDENTIAL TENANCY ACT AND MANUFACTURED HOME PARK TENANCY ACT) (NO. 3) REGULATION* (the "COVID-19 Regulation") states the following regarding effected rent repayment plans entered into between July 16 to August 17, 2020:

Non-payment of affected rent

3 (3) If the landlord and tenant entered into a prior agreement and the prior agreement does not address the full amount of overdue affected rent, the landlord must give the tenant a repayment plan in respect of the amount of overdue affected rent that is not addressed in the prior agreement.

After reviewing the repayment plan entered into between the Landlord and the Tenant on July 22, 2020; I find that this repayment plan does not include the unpaid effected rent due for August 2020, for this tenancy.

Pursuant to section 3 (3) of COVID-19 Regulation, I find that the Landlord was required to issue a new repayment plan to the Tenant that includes the full outstanding rent due, for this tenancy, for the effected period between April 1 to August 1, 2020.

As the August rent was not included in this July 22, 2020, repayment plan, I find that this repayment plan is not enforceable as a means to end this tenancy.

I accept the agreed-upon testimony of both parties that the Landlord did issue a second repayment plan to the Tenant on September 4, 2020. I have reviewed the September 4, 2020 repayment plan and find that it covers all outstanding rent due during the COVID effected period of April 1 to August 1, 2020, listing the due date of the first instalment of payment plan as of October 1, 2020, in the amount of \$589.00.

Section 4 of the *COVID-19 Regulation* states the following regarding the terms of the effected rent repayment plans:

Terms of repayment plan

- 4 (1) *The following are terms of each repayment plan:*
- (a) the repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;*
 - (b) the payment of the overdue rent must be in equal instalments;*
 - (c) each instalment must be paid on the same date that rent is due under the tenancy agreement;*
 - (d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.*
- (2) *A repayment plan must be in writing and include all of the following:*
- (a) the date the repayment period starts as determined under subsection (1) (a);*
 - (b) the total amount of the affected rent that is overdue;*
 - (c) the date on which each instalment must be paid;*
 - (d) the amount that must be paid in each instalment.*
- (3) *If a repayment plan given by the landlord to the tenant under section 3 (2), (3) or (4)*
- (a) does not comply with a requirement set out in subsection (1) of this section,*
 - (b) does not include the information described in subsection (2), or*
 - (c) includes information that is inaccurate or incomplete,*
- the landlord must give the tenant another repayment plan that complies with this section and includes accurate and complete information*

After reviewing the repayment plan issued to the Tenant on September 4, 2020, I noted that this repayment plan required the Tenant to make the first payment on October 1, 2020, within 27 days of this plan being issued. I find that the Landlord breach section 4(1d) of the *COVID-19 Regulation* when they required the first payment for this repayment plan in less than 30 days after this plan had been issued.

Section 4(3c) of the *COVID-19 Regulation* requires that when a repayment plan includes information that does not comply with section 4(1), the landlord must issue the tenant another repayment plan that complies with this *COVID-19 Regulation*. Consequently, I find that the repayment plan issued on September 4, 2020, does not

comply with the *COVID-19 Regulation* and is therefore not an enforceable repayment plan.

Accordingly, I find that the Notice to end tenancy issued on October 2, 2020, due to non-payment of the repayment plan, is not valid or enforceable under the *Act*, and is of no force or effect.

I order the Landlord to issue a new repayment plan for all the outstanding rent due between the effected rent period of April 1 to August 1, 2020, for this tenancy, in accordance with the *COVID-19 Regulation*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant granted permission to take a one-time deduction of \$100.00, from their next month's rent in full satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice issued October 2, 2020, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: December 14, 2020

Residential Tenancy Branch