



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, CNR, LRE, PSF, OLC, MNDCT, FFT (tenant);
FFL, OPU (landlord)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under the “Ten-Day Notice “ pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenants YZ and ZW (“the tenant”), spouses, attended and explained that the third named tenant is their child. The landlords attended with their son and agent JQ and the translator SC (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

During the 87-minute hearing, the parties discussed possible settlement of the dispute. The Arbitrator assisted the parties in the discussion pursuant to section 63. No settlement was reached, and the arbitration continued to conclusion.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Ten-Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claims are not related to whether the tenancy continues. Therefore, all the tenant's claims except for the applications to dispute the landlord's Notice and reimbursement of the filing fee are dismissed, and I grant the tenant liberty to reapply.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Ten-Day Notice? Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the tenancy began on August 26, 2019. Rent is \$1,200.00 monthly. The tenant provided a security deposit at the beginning of the tenancy which is held by the landlords.

The landlord testified that the rent is due on the first of the month. The tenant testified that the rent has always been paid on the 10th of the month. Each was adamant that their version of the verbal agreement was correct.

The parties did not sign a tenancy agreement. The tenant stated they attempted unsuccessfully to get the landlord to present an agreement at the beginning of the tenancy. The tenant submitted a written statement from YH confirming YH attended with the tenant at the landlord's home on two occasions asking for a lease agreement; the landlord has failed to present a lease despite promising to do so. The tenant testified they believed they were "powerless" in this regard.

The tenant testified the landlord required that they pay rent every month in cash. The tenant stated they wanted a receipt and always requested one. The landlord always refused to provide a receipt.

The landlord denied this version of events and stated the landlord provided a receipt when asked; however, the landlord did not submit copies of any such receipts.

The landlord submitted a list of payments received from the tenant by month which did not state the day of receipt. Accordingly, neither party submitted proof of the date of payment of rent.

The landlord issued a Ten-Day Notice on October 2, 2020 claiming that the rent due on October 1, 2020 was not paid. A copy of the Notice was submitted which is in the standard RTB form.

The tenant acknowledged service of the Notice on October 2, 2020 and filed a dispute on October 7, 2020 within the time permitted. The tenant claimed they refused to pay rent as the landlord persisted in requiring cash payments and refused to provide receipts. They also testified that the landlord refused to allow bank transfers.

The tenants acknowledged that they have not paid rent for the months of October, November or December 2020 only because the landlord insisted on receiving cash without providing receipts. They testified that because of the landlord's conduct, they have been unable to apply for rental assistance during the State of Emergency.

The landlord denied the tenant's assertions and requested an Order of Possession.

The tenant requested the Notice be dismissed as it was incorrect. They requested that the tenancy continue.

Analysis

Section 46 of the Act allows a landlord to issue a Notice for unpaid rent and states as follows:

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]*.

Section 52 states as follows with respect to the form and content of the Notice:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

The Ten-Day Notice states that the effective date under section 52(c) is October 12, 2020.

I find the landlord has failed to meet the burden of proof under section 46 to establish when rent was due. I have considered the landlord's unsupported testimony that rent was due on the first of the month which was credibly contradicted by the tenants.

I have considered the believable testimony of the tenant as to when rent was paid and how. I find their assertions to be believable about the requirement for cash payments received without a receipt which they requested. I find this credible assertion casts doubt on the landlord's testimony that rent was paid on the first of the month. I find the landlord has not submitted the usual business documents such as a lease agreement, a tenant ledger, and receipts to provide documentary support for their claim.

As the landlord has not established when rent is due, I find the Notice also fails to comply with section 52 as the effective date is unsubstantiated.

I have considered the testimony and documentary evidence and find that the landlord, more likely than not, is receiving cash payments for rent and failing or refusing to provide receipts.

The landlord's statement of rental payments received does not provide the date of receipt and I do not place any weight on this evidence.

I find the landlord has not met the standard of proof with respect to the requirement that the Notice comply with section 52.

I therefore grant the tenant's application to dismiss the Notice. The tenancy shall continue until it is ended in accordance with the Act.

As the tenant has been successful in their application, the tenant is awarded reimbursement of the filing fee of \$100.00 which the tenant may deduct from rent on a one-time basis only.

Conclusion

The Notice to End Tenancy dated October 2, 2020 is vacated and of no force or effect. The tenancy shall continue until it is 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: December 18, 2020

Residential Tenancy Branch