



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, RP, RR, LRE, PSF, MNRT, DRI, ERP, LAT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order that the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$1,950 pursuant to section 33;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of three 10 Day Notices to End Tenancy for Unpaid Rent (the "**October Notice**" "**November Notice**" and "**December Notice**", collectively, the "**Notices**") pursuant to section 46;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,700 pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form, amendments, and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with his evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Severing of Tenants' Claim

Rule of Procedure 2.3 requires that the claims made in an application be related to one another. In their application, the tenants brought a number of claims for adjudication. They are not all related.

This hearing was scheduled for one hour. It would not be possible to conduct adequate hearing on all the claims made by the tenants in that time. Accordingly, at the outset of the hearing, I deemed it necessary to sever the tenants' claims and only deal with the most pressing of the issues raised. In light of the fact that the tenancy may be terminated following my determination on the tenants' application to cancel the Notices, I found that this portion of the tenants' claim was the most pressing.

Per Rule 2.3, I dismiss, with leave to reapply, all claims made by the tenants in the application except for their application to dispute the Notices.

Issues to be Decided

Are the tenants entitled to an order cancelling the Notices?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting June 1, 2019. Monthly rent is \$850 and is payable on the first of each month. The rental unit is a suite with a living room and bedroom located in a semi-detached house. There are seven bedrooms in the house, which are rented out to other occupants by the landlord. The tenants did not pay the landlord a security deposit.

The landlord testified that in the first month of the tenancy, tenant EC paid the full amount of rent to the landlord. He testified that, in July and August 2019, the tenants each paid a portion of the monthly rent to the landlord. EC paid the landlord \$450 per month and tenant LE pays the landlord \$400. However, in from September 2019 onwards, the landlord testified that the tenants were continuously in arrears due to (for the most part) EC underpaying his portion of the monthly rent.

He testified that, as of March 1, 2020, the tenants were in arrears \$1,250. He testified that he served them with a 10 Day Notice to End Tenancy on March 8, 2020 (the "**March Notice**"). The parties agree that the tenants addressed these arrears (through partial payment and work done on the house *in lieu* of payment), and the tenancy continued. The landlord testified the tenants paid \$600 towards these arrears, and that EC did some repair work on the residential property for which the landlord credited him \$500. He testified that \$150 of the amount owed by the tenants as of March 1, 2020

remained outstanding. The tenants testified that the amount owing as of March 1, 2020 was completely discharged by their payment and work.

The landlord testified that the EC did not pay his portion of the April rent, and the tenants fell back into arrears.

The landlord testified that the tenants made payments as follows:

	EC paid	LE paid	Arrears	
Sep-19	\$400	\$400	\$50	
Oct-19	\$400	\$400	\$100	
Nov-19	\$400	\$400	\$150	
Dec-19	\$300	\$400	\$300	
Jan-20	\$400	\$400	\$350	
Feb-20	\$0	\$400	\$800	
Mar-20	\$0	\$400	\$1,250	
Apr-20	\$600	-	\$650	*payment per March Notice
Apr-20	\$500	-	\$150	*labour in lieu
Apr-20	\$0	\$400	\$600	
May-20	\$450	\$400	\$600	
Jun-20	\$150	\$400	\$900	
Jul-20	\$0	\$400	\$1,350	
Aug-20	\$300	\$400	\$1,500	
Sep-20	\$0	\$0	\$2,350	
Oct-20	\$0	\$0	\$3,200	
Nov-20	\$0	\$0	\$4,050	
Dec-20	\$0	\$0	\$4,900	
Jan-21	\$0	\$0	\$5,750	
Total Arrears			\$5,750	

The landlord did not provide any documents (such as bank records, deposit slips, or a ledger) to corroborate these amounts. The tenants testified, and the landlord agreed, that the tenants paid their rent in cash, and that the landlord did not provide them with receipts.

The tenants denied that they were in arrears as alleged by the landlord. They testified that, as they paid the rent in cash and he did not issue receipts, he may have forgotten that he received some of their payments. They also speculated that the landlord may not have realized who they were when they paid him their rent, as there are a several other occupants in the residential property and, on more than one occasion, the landlord has called LE by another occupant's name.

The tenants testified that, following discharging the arrears set out on the March Notice, their rent payments were as follows:

	EC paid	LE paid	Arrears
Apr-20	\$450	\$400	\$0
May-20	\$450	\$400	\$0
Jun-20	\$450	\$400	\$0
Jul-20	\$450	\$400	\$0
Aug-20	\$450	\$400	\$0
Sep-20	\$450	\$420	-\$20
Oct-20	\$0	\$425	\$405
Nov-20	\$0	\$0	\$1,255
Dec-20	\$0	\$0	\$2,105
Jan-21	\$0	\$0	\$2,955
Total Arrears			\$2,955

On October 5, 2020, the landlord served the tenants with the October Notice. It specified that the tenants were in arrears of \$1,950.

The tenants testified that EC attempted to pay the landlord \$500 as his portion of October 2020 rent, but that the landlord refused it. They testified that they did not attempt to make any further rent payments after October 2020, due to the fact that the landlord refused to accept EC's October 2020 payment.

On November 10, 2020, the landlord served the tenants with the November Notice (posted on the door), specifying arrears of \$2,800. On December 10, 2020, the landlord served the tenants with the December Notice (posted on the door), specifying arrears of \$3,650.

The tenants disputed the October Notice on October 9, 2020 and amended their application to dispute the November and December Notices on November 12, 2020 and December 18, 2020 respectively.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove that it is more likely than not that the Notices were validly issued and that the tenants are in arrears as alleged.

Based on the testimony of the parties, I find that the landlord has failed to discharge this onus.

I come to this conclusion for multiple reasons. The landlord provided no documentary evidence which would corroborate his testimony that the tenants were in arrears of \$3,200 as of October 1, 2020, or even \$1,950 (as set out on the October Notice). I would have expected the landlord to have provided a ledger or deposit slips which show the tenants' rent payments. I am also troubled by the fact that the landlord, contrary to section 26(2) of the Act, failed to provide receipts to the tenants for the cash payments he received from them. I have only the landlords unsupported testimony that the tenants were in arrears as alleged. That his testimony regarding the amounts owed is in conflict with the amounts the Notices indicate are owed causes me further doubt about the reliability of his testimony or his diligence regarding bookkeeping (I will not speculate as to the reason for these discrepancies).

As the landlord bears the onus to prove the tenants were in arrears as alleged on the Notices, the fact that the tenants have not provided corroboration of their testimony regarding their rent payments is less significant. I would also note that, as the landlord did not provide receipts for their cash rent payments, it would have been difficult for the tenants to provide corroboration of their testimony in any event.

As such, where the testimony regarding the amounts of rent paid by the tenants differs between the parties, I prefer the testimony of the tenants. As such, I find that as of October 1, 2020, the tenants were \$405 in arrears. I accept their testimony that EC attempted to pay the landlord \$500 after receiving the October Notice but that the landlord refused it. Had the landlord accepted this payment, the arrears owed by the tenants would have been more than paid in full.

I find that the October Notice is invalid and of no force in effect, as it states the incorrect amount of rent arrears owed by the tenants. Based on the fact that EC attempted to pay the landlord \$500 after receiving the October Notice, I am satisfied that had the October Notice shown the correct amount of arrears, the tenants would have paid the arrears in full, thus canceling the October Notice.

The error in the amount of arrears on the October Notice was further compounded on the November and December Notices. I find that these Notices are also invalid and have no force in effect. The tenants did not owe the amounts set out on those Notices and could not have reasonably been expected to pay those amounts.

For added clarity, I calculate that as of January 1, 2021 the tenants are in arrears of \$2,955 (as set out above) representing non-payment of November and December 2020 rent and January 2021 rent as well as partial payment of October 2020 rent. The tenants are obligated to pay these arrears. However, as a notice to end tenancy for nonpayment of rent for this amount of arrears has not been issued, I have no authority at this time to issue a monetary order or an order of possession.

Conclusion

I grant the tenants' application. The Notices are cancelled and of no force or effect. The tenancy shall continue.

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: January 14, 2021

Residential Tenancy Branch