



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on December 3, 2020, wherein the Landlord sought an Order of Possession and Monetary Order based on a 10 Day Notice to End Tenancy issued on November 12, 2020 (the "Notice") as well as recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on February 26, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Spelling of Tenant's name

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

At the outset of the hearing the Tenant confirmed the legal spelling of his name. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* I amend the Landlord's Application for Dispute Resolution to include the Tenant's correct legal name.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation based on the Notice?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Property Manager, L.F. testified as follows. She stated that on October 13, 2020 the management company for whom she works took over management of this rental unit. She stated that on October 23, 2020 she sent the Tenant a welcome package informing him that they had taken over management. She confirmed that she did not have a copy of the tenancy agreement nor did she did know when the tenancy began. L.F. testified that monthly rent is \$1,400.00 per month.

The Notice was issued on November 12, 2020 indicating that the sum of \$1,400.00 was outstanding. She confirmed that it was served on November 17, 2020 by posting to the rental unit door. She stated that she then went to the rental unit on November 19, 2020 to see if the notice was gone.

L.F. further stated that on November 12, 2020, she also served a 24-hour notice of entry as she wanted to "catch the Tenant". She also spoke with the Tenant's roommate D. on that date.

L.F. claimed that the Tenant did not pay the outstanding rent as of November 25, 2020. L.F. stated that she was informed by the owner, that the Tenant reached out to the owner in early December and paid the \$1,400.00 for November to the owner. L.F. stated that the Landlord could not remember the exact date he received payment from the Tenant.

The Tenant responded to the Landlord's claims as follows. He confirmed that he moved into the rental property in 1998. He stated that during this tenancy he always paid his rent directly to the owner, P.L. He stated that when he sold his condo in 2012, and paid

his rent in full for the year, following which he paid monthly. The Tenant confirmed that his current rent is \$1,400.00. He stated that the only time he didn't pay on time, was when during COVID-19 when he did not receive his funds from the government.

The Tenant testified that he paid the November, December, and January rent directly to the owner, in addition to \$200.00 extra for November and December as he acknowledged he was late paying his rent. The Tenant could not remember the exact date he paid his November rent, but stated he did so after receiving the Notice. He also could not remember the date that he paid the December rent, but believed it was in the middle of December.

The Tenant stated that he and the owner are good friends. The Tenant further stated that up until the Landlord hired the property management company, he was the Landlord's representative for the strata. The Tenant stated that when he paid the Landlord the November and December rent and the extra \$200.00, the owner said that his wife had dementia and he could not deal with the stress and that was why he hired the property management company.

The Tenant stated that he did not pay the Property Management company as there were errors in terms of his name, and the notice indicated that the rental unit was a manufactured home.

The Tenant confirmed he had the money for his February rent and would pay it on Monday March 1, 2021 when he paid the March rent. He further confirmed he would provide those funds to the property management company, rather than to the owner directly. The Tenant also confirmed he was willing to sign a standard form tenancy agreement to confirm the terms of this tenancy.

Analysis

Ending a tenancy is a significant request and must be done in accordance with the *Act*. In this case, the Landlord seeks an Order of Possession and monetary compensation based on the Notice, which was issued pursuant to section 46 of the *Act*. Section 46 of the *Act* provides 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*].

(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.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As provided for in section 46(2) such a notice must comply with section 52 which reads as follows:

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, and

(e) when given by a landlord, be in the approved form.

The Tenant testified that he paid his November rent to the owner directly and that he did not pay the property management company as there were significant errors on the Notice. In this respect he noted that his name was spelled incorrectly, and the rental unit was noted as a manufactured home.

The Landlord's Property Manager confirmed the Tenant paid his November 2020, December 2020 and January 2021 rent directly to the owner. She confirmed that the owner could not remember when the payments were received. She also conceded that the owners poor record keeping was an issue the property management company was attempting to resolve.

I accept the Tenant's evidence that he has lived in the rental unit for over 20 years, and that in that time he has paid his rent to the owner directly. I also accept his testimony that he and the owner were friends and that the Tenant acted as the owner's representative on the strata.

The evidence indicates that due to family issues, the owner hired a property management company. As there was no written tenancy agreement, and apparently little documentary records, the property management company relied on the owner's memory with respect to matters relating to the tenancy. L.F. stated that they took over management of the rental unit on October 23, 2020, some 8 days prior to the November rent being due.

The evidence confirms that the Tenant's name was incorrectly spelled on the Notice. As well, the Notice indicated the rental unit was a manufactured home, as the Notice was issued pursuant to the *Manufactured Home Park Tenancy Act*. It is not surprising the Tenant was suspicious of this Notice and did not pay the rent to the property management company, particularly after such a long tenancy, and positive relationship with the owner. While such errors are not always fatal, in this case I find the Notice to be invalid.

Even in the event I had found the Notice to be valid, I would cancel the Notice pursuant to section 46(4)(a) as I accept the Tenant's evidence that he paid his November 2020 rent directly to the owner. On balance, I find it likely he paid the owner within five days

of receipt of the Notice. The owner was not present at the hearing to provide evidence as to the date of receipt and the L.F. conceded that the owner simply could not remember.

I therefore cancel the Notice. This tenancy shall continue until ended in accordance with the *Act*.

I accept the Tenant's evidence that he paid his November 2020, December 2020, and January 2021 rent to the owner. This was not disputed by L.F. On the Application the Landlord sought monetary compensation in the amount of \$2,800.00 for the November and December rent. As those funds have been paid, I dismiss this portion of the Landlord's claim.

As the Landlord has been unsuccessful in this Application, their request to recover the filing fee is also dismissed.

The Tenant confirmed that he would sign a tenancy agreement with the property management company. As a written tenancy agreement does not appear to exist, the following must be included in the agreement:

- The Tenant's name is to be spelled as noted on the unpublished cover page of this my Decision.
- The Landlord is to be noted as the property management company as agents for the owner.
- This is a residential tenancy under the *Residential Tenancy Act*.
- The tenancy began in 1998.
- Monthly rent is \$1,400.00.
- The Tenant is to be credited \$200.00 for his overpayment of rent in November and December 2020 towards any future rent.
- Any amounts paid to the owner as a security or pet damage deposit must be noted on the tenancy agreement.

The Tenant stated that he and the owner had discussed him paying rent every two months rather than monthly. The Tenant and L.F. agreed that they would speak to the owner about this request, and should the owner agree, the date of payment of rent will be so noted on the tenancy agreement.

During the hearing, L.F. testified that she issued two Notices of Entry for the purposes of “catching the Tenant”. The Landlord is reminded that they must not enter the rental unit unless the entry is in accordance with section 29 of the *Act* which reads as follows:

Landlord's right to enter rental unit restricted

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i)the purpose for entering, which must be reasonable;
 - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d)the landlord has an order of the director authorizing the entry;
- (e)the tenant has abandoned the rental unit;
- (f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Further, although a landlord may prefer to personally serve a tenant with documents, sections 88, 89 and 90 of the *Act* provide direction with respect to other means of service.

Conclusion

The Landlord’s request for an Order of Possession and monetary compensation based on the Notice is dismissed without leave to reapply.

The Landlord's request for recover of the filing fee is dismissed without leave to reapply.

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: March 3, 2021

Residential Tenancy Branch