Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL / CNR-MT, CNC-MT, OLC, MNDCT, RP, LRE, PSF, MNRT

Introduction

This hearing dealt with two applications application pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlords' application for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of $3,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant's application (against landlord MA only) for:

- an order that landlords make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit in the amount of $200 pursuant to section 33;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**") pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month **Notice**") pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlords provide services or facilities required by law pursuant to section 65;
- more time to make an application to cancel the Notices pursuant to section 66; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $23,000 pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. Landlord MA attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that MA and I were the only ones who had called into this teleconference.

The landlords' application was reconvened from an *ex parte*, direct request proceeding in an interim decision dated December 10, 2020.

Preliminary Issue – Service

MA testified that he served the tenant with a copy of the notice of reconvened hearing, the interim decision, and his supporting evidence by registered mail on December 15, 2020. He provided a Canada Post tracking number confirming this mailing (reproduced on the cover of this decision). I find that the tenant has been served with the required documents in accordance with the Act.

MA testified that he was unaware of the tenant's application, and the first that he had learned of the tenant's claims against him were when I asked if he was aware of them at the hearing.

Residential Tenancy Branch Rule of Procedure 2.11 requires that a respondent making a cross-application in response to an application brought against them must serve their cross-application and supporting documents on the opposing party no later than 14 days prior to the hearing.

Based on the undisputed testimony of MA, I find that the tenant failed to do this. Accordingly, and the tenant failed to attend the hearing, I dismiss all parts of the tenant's application except those parts disputing the Notices and seeking an extension of time (as the landlord bears the evidentiary burden to show prove that the Notices were issued for valid reasons) without leave to reapply.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing, MA sought to further amend the application to include a claim for December 2020 and January 2021 rent which remains outstanding.

Rule of Procedure 4.2 states:

> **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.

In this case, the landlords are seeking compensation for unpaid rent that has increased since the application for dispute resolution was made. The increase in landlords'

monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlords' application be amended to include a claim for December 2020 and January 2021 rent ($3,800).

Issues to be Decided

Are the landlords entitled to:

1) an order of possession;
2) a monetary order for $7,200;
3) recover the filing fee;
4) retain the security deposit in partial satisfaction of the monetary orders made?

Is the tenant 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 tenant, a third party named "AB", and landlord MA entered into a written, month to month tenancy agreement starting July 15, 2020. Monthly rent was $1,900 and is payable on the first of each month. The tenant paid the landlords a security deposit of $950. The landlords still retain this deposit.

MA testified that AB left the rental unit shortly after the start of the tenancy, but that MA continued to reside in it after she left. He testified that the rental unit is a basement suite and that he lives in the upper level (and has done so for the duration of the tenant's tenancy). He testified that he rents the entire residential property (a single detached house) from landlord SB. The tenant and SB have no contractual relationship. MA testified that he sublets the rental unit to the tenant.

MA testified that the tenant vacated the rental unit sometime in January 2020 and has removed all of his belongings from the rental unit. He did not give MA any notice of this. He did not provide his forwarding address to MA and did not return the keys. Despite this, MA stated that he wanted to pursue his application for an order of possession, in the event the tenant tries to return.

MA testified that the tenant failed to pay rent for the months of October, November, December 2020, and January 2021.

MA issued the 10 Day Notice on October 15, 2020 and had the tenant served personally with it that same day. He submitted a signed and witnessed proof of service form corroborating this. The 10 Day Notice indicated the tenant was in arrears of $1,900 owing October 1, 2019. It specified an effective date of October 24, 2020.

MA testified that, to his knowledge, the tenant had not dispute the 10 Day Notice after receiving it. I note that the tenant's application indicated that he was disputing the Notices and was filed on December 10, 2020. In light of the tenant's failure to serve his application on MA, it is not surprising that MA was unaware that the tenant disputed the Notices.

MA gave no evidence regarding the One Month Notice.

Analysis

I must first note that landlord SB has no contractual relationship with the tenant. Her contractual relationship is solely with MA. In that relationship, SB is the landlord, MA is the tenant, and the residential property is the rental unit. As such, SB is not entitled to any relief against the tenant. She is only entitled to claim relief against MA under the Act.

The relationship between MA and the tenant is also one of landlord/tenant. MA is landlord and the tenant is the tenant. The rental unit is the basement suite of the residential property. MA is entitled to seek relief against the tenant under the Act.

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 it is more likely than not that the facts required to make out his claims are true.

Based on the testimony of MA, I find that the tenant was obligated to pay monthly rent in the amount of $1,900. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of $7,200, comprised of the balance of unpaid rent owed between October 2020 and January 2021 (inclusive).

Accordingly, I order that the tenant pay MA this amount.

Based on the witnessed proof of service form filed by MA, I find that the tenant was served with the 10 Day Notice personally on October 15, 2020.

Sections 46(4) and (5) of the Act states:

> (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 10 Day Notice meets the form and content requirements of section 52 of the Act, and any information it omits (such as the landlord's address for service) was reasonably known to the tenant (as the landlord lived upstairs).

The tenant did not dispute the 10 Day Notice within 5 days of being served with it. He disputed it on December 10, 2020, almost two months after having been served with it. The tenant also applied for more time within which to apply to dispute the 10 Day Notice. He did not submit or serve any evidence in support of this part of his application.

Section 66 of the Act permits an arbitrator to change time limits, in some circumstances:

> **Director's orders: changing time limits**
> **66**(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.
> (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:
> (a) the extension is agreed to by the landlord;
> (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
> (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.
>
> [emphasis added]

The effective date of the 10 Day Notice was October 24, 2020. The tenant applied to extend the five-day time limit on December 10, 2020. Per section 66(3) of the Act, I

have no authority to extend the time limit past October 24, 2020. As such, I decline to do so.

Accordingly, I find that the tenant was conclusively presumed to have accepted the tenancy ended on October 24, 2020. Accordingly, I issue the attached order of possession entitling MA to vacant possession of the rental unit on March 4, 2021.

In the event I am incorrect, I find that the tenancy has ended pursuant to section 44(1)(d) of the Act, which states that a tenancy ends when "the tenant vacates or abandons the rental unit". I accept the landlord's uncontroverted testimony that the tenant vacated the rental unit at some point in January 2020. Accordingly, the tenancy is now over, and MA is entitled to the same order of possession I have issued above.

As I have already awarded an order of possession (on two separate bases), it is not necessary for me to address the One Month Notice.

Pursuant to section 72(1) of the Act, as MA has been successful in the application, he may recover his filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlords may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay MA $6,350, representing the following:

Description	Amount
Rent Arrears	$7,200
Filing Fee	$100
Security Deposit Credit	-$950
Total	**$6,350**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to MA by March 4, 2021 at 1:00 pm.

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 1, 2021

Residential Tenancy Branch