



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMAX REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 09, 2021 (the “Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 03, 2021 (the “Notice”). The Tenants also sought to recover the filing fee.

The Tenants appeared at the hearing. The Agent for the Landlord appeared at the hearing. Y.X. joined the hearing to assist the Agent. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant provided the correct spelling of Tenant F.R.’s name which is reflected in the style of cause.

The Agent confirmed the correct Landlord name which is reflected in the style of cause.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants’ evidence and the Agent confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started February 20, 2019 and was for a fixed term ending February 28, 2021. The tenancy then became a month-to-month tenancy. Rent is \$4,350.00 per month due on the first day of each month. The Tenants paid a security deposit of \$2,175.00.

The Notice states that the Tenants failed to pay \$9,353.06 in rent due April 01, 2021. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by the Agent. The Notice has an effective date of April 18, 2021. The only issue with the form or content of the Notice raised by the Tenant was the amount of rent owing.

The Agent testified that the Notice was sent to the Tenants by registered mail on April 03, 2021. The Tenant testified that the Notice was sent by email and received April 03, 2021. The Notice itself states that it was served by email.

The Tenants submitted a Repayment Plan outlining repayment of \$8,575.00 in rent owing. The Tenants submitted an outline of payments made towards the amount owing on the Repayment Plan. Neither party could say whether the Repayment Plan complied with the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation* (the “Regulation”). The parties agreed \$8,575.00 in rent was outstanding as of August 14, 2020.

The Agent testified that the \$9,353.06 noted on the Notice includes the rent arrears. The Agent testified that they agreed with the Repayment Plan up until April when rent was not paid. The Agent testified that the Tenants failed to pay April rent and therefore the Notice was issued for all outstanding rent.

The Tenant agreed the Tenants did not pay April rent by April 01, 2021. The Tenant said the Tenants did not have authority under the *Residential Tenancy Act* (the “Act”) to withhold April rent.

The Agent testified that the Tenants paid \$4,500.00 on April 06, 2021 and \$4,350.00 on May 03, 2021 after the Notice was issued and the Tenant agreed with this.

The Tenant advised that the Tenants disputed the Notice because of the amount noted on the Notice.

The Agent sought a Monetary Order for outstanding rent of \$4,853.06 as of the date of the hearing. The Tenants agreed \$4,853.06 in rent is currently outstanding. The Tenant said the Tenants did not have authority under the *Act* to withhold this rent.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

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...

(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...

Based on the written tenancy agreement, I find the Tenants were required to pay \$4,350.00 in rent per month by the first day of each month.

I have reviewed the Repayment Plan and am satisfied it complies with the *Regulation*. Therefore, I find the Tenants were required to pay an additional \$714.58 by the 15th day of each month starting October 15, 2020.

Based on the testimony of the Tenant, I find the Tenants did not have authority under the *Act* to withhold rent at any point.

Based on the testimony of the parties, I find the Tenants did not pay April rent by April 01, 2021. Based on the e-transfers submitted, I find the Tenants paid \$4,500.00 on April 05, 2021. Therefore, I find the Landlord was entitled to issue the Notice on April 03, 2021 pursuant to section 46(1) of the *Act*.

I agree that the Tenants did not owe \$9,353.06 in rent when the Notice was issued. However, the Tenants did owe \$4,350.00 for April rent. Further, the Tenants' own outline of payments made in accordance with the Repayment Plan shows that the Tenants owed \$715.54 for the rent arrears outlined in the Repayment Plan when the Notice was issued. Therefore, I find the Tenants owed \$5,065.54 in rent when the Notice was issued and that the Landlord was entitled to issue the Notice pursuant to both section 46(1) of the *Act* and section 6 of the *Regulation*.

The Tenants' outline of payments made in accordance with the Repayment Plan shows the Tenants paid \$150.00 on April 04, 2021. I understand this \$150.00 payment to be covered by the \$4,500.00 actually paid April 05, 2021 as the parties agreed that only two payments were made after the Notice was issued and the amounts add up.

Based on the testimony of the parties, I find the Tenants received the Notice April 03, 2021.

The Tenants had five days from receipt of the Notice on April 03, 2021 to pay the correct outstanding amount of \$5,065.54 or dispute the Notice pursuant to section 46(4) of the *Act*.

The Tenants did not pay the correct outstanding amount of \$5,065.54 by April 08, 2021 as the parties agreed the Tenants only paid \$4,500.00 by April 08, 2021.

The Tenants disputed the Notice April 09, 2021, outside the five-day deadline which means the Tenants were out of time to dispute the Notice. The Tenants did not seek to extend the deadline to dispute the Notice.

In any event, the Tenants disputed the Notice because the amount of outstanding rent on the Notice was wrong. I agree that the amount noted on the Notice was wrong. However, the wrong rent amount did not invalidate the Notice. I find the Tenants knew the correct rent amount outstanding based on the Repayment Plan and their own outline of what was paid when. Therefore, the Tenants were required to pay the correct outstanding rent amount to cancel the Notice pursuant to section 46(4)(a) of the *Act*.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. Again, the wrong rent amount did not invalidate the Notice pursuant to section 52 of the *Act*.

Given the above, I find the Landlord was entitled to issue the Notice and that the Notice is valid. I find the Tenants did not pay the correct outstanding amount within five days of receiving the Notice. I find the Tenants did not dispute the Notice in time and did not provide a valid basis to dispute the Notice at the hearing. In the circumstances, the Tenants' dispute of the Notice is dismissed without leave to re-apply.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have found the Notice complies with section 52 of the *Act*. I have also dismissed the Tenants' dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenants.

Further, the parties agreed \$4,853.06 in rent is currently outstanding. The Tenant acknowledged that the Tenants did not have authority under the *Act* to withhold this rent. I acknowledge that this rent is rent arrears covered by the Repayment Plan. However, now that the tenancy is ending, all outstanding rent is due, and the Landlord is entitled to a Monetary Order for all outstanding rent pursuant to section 55(1.1) of the *Act*.

Given the Tenants were not successful in the Application, I decline to award them reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to a Monetary Order in the amount of \$4,853.06. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 28, 2021

Residential Tenancy Branch