



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OPRM-DR, OPR-DR, FFL

Introduction

This hearing was scheduled to deal with cross applications. The tenant had applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") and a Monetary Order for damage or loss under the Act, regulations, or tenancy agreement. The landlords applied for an Order of Possession and Monetary Order for unpaid rent.

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I explored service of the hearing materials upon each other, as set out below.

The tenant testified that he sent his proceeding package to the landlord via regular mail. The tenant did not know the date of mailing and did not have any evidence to corroborate he sent the package or that the landlord received the proceeding package. The landlord testified that he did not receive the tenant's proceeding package. An Application for Dispute Resolution and other required documents must be served in a manner that complies with section 89 of the Act. Regular mail is not a permissible method of service under section 89 of the Act and in the absence of any evidence to show the landlord received the tenant's Application for Dispute Resolution I declined to hear the tenant's application. The tenant's monetary claim against the landlord is dismissed with leave to reapply.

The landlord testified that he sent the landlord's original proceeding package to the tenant via registered mail on March 4, 2021. The landlord produced a registered mail receipt, including tracking number, as proof of service. The tenant acknowledged receipt of the landlord's original proceeding package.

The landlord also submitted three Amendments that appear to be an attempt to increase the monetary claim to reflect further loss of rent and utilities incurred while awaiting the hearing. The landlord stated he sent the Amendments to the tenant with the exception of the most recent one dated May 11, 2021. The tenant denied receiving any Amendments. The landlord was instructed to provide the registered mail tracking numbers and dates to prove he served the Amendments. The landlord indicated he did not have the receipts in front of him and they had been turned over to the Residential Tenancy Branch. I noted that there was one other registered mail receipt in the landlord's evidence, dated for May 4, 2021. The landlord stated the registered mail receipt of May 4, 2021 was for a receipt sent to the tenant in recognition of partial rent payments he received from the tenant.

The tenant acknowledged that he understood the landlord's original monetary claim was for \$540.00 in unpaid rent. Both parties provided consistent testimony that the tenant continues to reside in the rental unit and they were in agreement as to the amount of partial payments the tenant has given to the landlord to date. Therefore, I informed the parties that I would permit the landlord's monetary claim to be amended during the hearing to reflect unpaid and/or loss of rent up to and including the current month.

Rule 4.2 of the Rules of Procedure provide for amending a claim at the hearing:

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.

I found the tenant's continued occupation of the rental unit while awaiting this proceeding, without paying all of the monthly rent, is reasonably foreseeable and I amend the monetary claim accordingly.

I did not consider the landlord's claim for unpaid utilities as I was not satisfied the tenant had sufficient notice or was aware of the utilities claimed against him. The landlord's claim for unpaid utilities was dismissed with leave to reapply.

Neither party expressed any objection to this approach.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?

Background and Evidence

The tenancy started on March 1, 2020 and the tenant paid a security deposit of \$775.00. The monthly rent was set at \$1550.00 payable on the first day of every month.

The tenant did not pay the rent when due on February 1, 2021. The landlord served the tenant with a 10 Day Notice to End tenancy for Unpaid Rent ("10 Day Notice"), in person, on February 9, 2021 indicating \$1550.00 in rent was outstanding as of February 1, 2021 and a stated effective date of February 19, 2021. The tenant paid the landlord \$1010.00 on February 16, 2021. The tenant also filed his Application for Dispute Resolution on February 16, 2021 to dispute the 10 Day Notice, indicating the landlord was responsible for causing damage to his computer; however, the tenant's Application for Dispute Resolution was dismissed due to failure to sufficiently serve his Application for Dispute Resolution upon the landlord.

On February 19, 2021 the landlord made his Application for Dispute Resolution to seek an Order of Possession and Monetary Order for unpaid rent.

After filing the landlord's Application for Dispute Resolution, the tenant paid the landlord the following amounts:

March 8, 2021: \$800.00 toward rent
May 3, 2021: \$750.00 toward rent
May 12, 2021: \$133.00 and \$35.00 for utilities
May 19, 2021: \$600.00 toward rent

Taking into account the payments described above, the landlord submits that the tenant owes \$3040.00 in rent for months up to and including May 2021. The landlord requested a Monetary Order for this sum, plus the filing fee, and an Order of Possession effective May 31, 2021.

The tenant explained that he made deductions from rent because he attributed damage to his computer to the landlord's actions and because the dryer stopped working and he

notified the landlord of that the dryer stopped working in April. The tenant acknowledged that he took it upon himself to make deductions from rent and that he did not have any authorization from the landlord or Arbitrator to make deductions from rent.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent, authorization has been given by the landlord or an Arbitrator, or where the tenant has made emergency repairs to the property under section 33 of the Act.

It is undisputed that the tenant was required to pay rent of \$1550.00 on the first day of every month under the tenancy agreement and the tenant failed to do so for the month of February 2021. The tenant also acknowledged he did not have a legal basis under the Act for withholding the rent, as described above.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

In this case, the tenant received a 10 Day Notice in person on February 9, 2021 meaning he had until February 14, 2021 to pay the outstanding rent or until February 15, 2021 to file to dispute the 10 Day Notice since February 14, 2021 falls on a weekend. The tenant paid a portion of the outstanding rent and filed an Application for Dispute Resolution to dispute the 10 Day Notice on February 16, 2021 which is outside of his five day time limit. Therefore, I find the tenant is conclusively presumed to have accepted that the tenancy would end and he would have to vacate the rental unit by February 19, 2021.

The tenant did not vacate the rental unit when required and having been satisfied the tenancy is over I grant the landlord's request for an Order of Possession effective May 31, 2021.

As for recovery of unpaid and/or loss of rent, I heard consistent evidence from both parties as to the amount of partial payments made by the tenant from February 2021 onwards and I find the landlord's calculation that the tenant still owes \$3040.00 in rent for the months up to and including May 2021 to be accurate. Therefore, I provide the landlord a Monetary Order for that amount, plus recovery of the \$100.00 filing fee.

Conclusion

The landlord is provided an Order of Possession effective at 1:00 p.m. on May 31, 2021.

The landlord is provided a Monetary Order in the sum of \$3140.00 for recovery of unpaid and/or loss of rent up to and including the month of May 2021 and the filing fee.

The landlord's request for utilities is dismissed with leave to reapply.

The tenant's request for compensation against the landlord is dismissed with 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: May 20, 2021

Residential Tenancy Branch