



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL**

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent, as amended.

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not make an unofficial recording of the proceeding.

At the outset of the hearing, the tenant stated he suffered from various disabilities including a brain injury that has made it more difficult to understand and deal with issues. However, the tenant confirmed that he understood the nature of this proceeding pertained to unpaid rent. The tenant asked what the consequences to him may be to which I informed him that if the landlord was successful, the landlord would be provided legal orders entitling her to regain possession of the rental unit and an order to recover the unpaid and/or loss of rent. The tenant appeared to understand the information but I also suggested to the tenant that he raise to my attention any issue or question that may arise for him and I would provide further explanation and/or re-phrase.

I confirmed the landlord sent the landlord's proceeding package via registered mail on March 25, 2021 and it was picked up by the tenant on April 8, 2021. The landlord sent additional documentation and evidence to the tenant on June 9, 2021 and the tenant confirmed receipt of the second package. I also confirmed the tenant has not submitted any materials prior to the hearing and the tenant intended to provide his position orally during the hearing.

I explained the hearing process to the parties and I gave the parties the opportunity to ask questions about the process. 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.

On another procedural matter, the tenant pointed out that the landlord incorrectly identified the address for the rental unit. The landlord confirmed she made a transposition error in the street address. The style of cause was amended to reflect the correct street address as confirmed by both parties.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, as claimed?
3. Award of the filing fee.

Background and Evidence

Under an oral tenancy agreement, the tenancy started in October 2016. No security deposit was required or paid. Under their oral agreement, the tenant was required to pay rent of \$700.00 on the first day of every month; however, there was a period of time where the tenant was paying the rent in semi-monthly payments without objection by the landlord. The rent has remained at \$700.00 per month throughout the tenancy.

The landlord submitted that the tenant began falling behind in his rent payments starting in mid-September 2019. Since then only three lump sum payments received from the tenant, in the amounts of: \$1500.00 in April 2020, \$1000.00 in June 2020 and \$1500.00 in July 2020. There have been no payments received from the tenant since the payment in July 2020. As of March 1, 2021, the balance of unpaid rent amounted to \$9000.00.

The landlord provided a ledger showing the rent payments received and the rent unpaid to demonstrate how the rental arrears were calculated. The tenant stated he received the ledger and he confirmed it appeared reasonably accurate to him.

On March 9, 2021 the landlord issued a *10 Day notice to End Tenancy for Unpaid Rent or Utilities* ("10 Day Notice") and sent it to the tenant via registered mail the same day. The 10 Day Notice indicates rent of \$9000.00 was outstanding as of March 1, 2021 and has a stated effective date of March 20, 2021.

The landlord provided a registered mail receipt, including tracking number, as proof of service of the 10 Day Notice. A search of the Canada Post website shows that Canada

Post left two notice cards for the registered mail but the tenant did not pick up the registered mail until April 8, 2021. The tenant confirmed that he received the 10 Day Notice.

Both parties provided consistent statements that the rental unit street address appearing on the 10 Day Notice contains a transposition error. Both parties were in agreement as to the street number of the rental unit that should have appeared on the 10 Day Notice.

Upon receiving the 10 Day Notice, the tenant did not pay any rent to the landlord or file an Application for Dispute Resolution to dispute the 10 Day Notice. Rather, he left a voice mail for the landlord asking for her email address and the property assessment notice for the rental unit but the landlord did not return his call.

The tenant explained that he wanted the property assessment notice to obtain the correct property identification information as he is going to purchase the property. The tenant stated he needs the correct property identification numbers to obtain funds from his WCB settlement in order to purchase the property. The tenant also stated that the landlord had provided him some paperwork with respect to purchasing the property but that he took the paperwork to his lawyer in April 2020 and his lawyer advised the tenant not to sign it, due to Covid-19, as he may be sued if he did. The parties had further communication concerning the purchase of the property in October 2020 but the tenant maintained that he needs the property assessment notice to apply for funding from his WCB settlement.

The landlord acknowledged that she and the tenant had an agreement that he may purchase the property for \$260,000 at one time but that the paperwork was not signed. The landlord pointed out that if the tenant needed the property assessment notice he could have obtained it from BC Assessment. The landlord stated that despite her previous willingness to sell the property to the tenant, the time for purchasing the property has expired as she was no longer willing to wait for the tenant. The landlord testified that she sent the tenant notification in February 2021 that the option to purchase the property had expired.

The tenant was of the position he is not responsible for obtaining the property assessment notice. I cautioned the parties that I did not have jurisdiction to resolve a dispute concerning an agreement to purchase the property and that in the absence of any documentation showing the tenant has a right in the property greater than that of a

tenant and I would proceed on the basis the tenant only has the right to use and occupancy under a tenancy agreement.

The tenant suggested that if he had the landlord's email address, he could have made installment payments toward the rental arrears electronically, or had his daughters arrange to do that on his behalf. The tenant indicated that if he could have made installments of one or two hundred dollars periodically. However, the tenant also stated that he forgets to make payments due to his disability.

The landlord responded that the tenant has historically mailed the rent to her by way of cheques. The landlord pointed out that the tenant could have sent post dated cheques by mail as a matter of convenience and she does not require certified cheques but he has not sent any payment since July 2020. The landlord had looked into opening an account with the credit union where the tenant banks but the credit union is a local business and does not have a branch in the town where the landlord resides so it was not useful for the landlord.

The landlord stated her email address is on Application for Dispute Resolution she filed on March 24, 2021 and the tenant picked up the landlord's Application for Dispute Resolution that was sent registered mail on the same date he picked up the 10 Day Notice, on April 8, 2021.

The landlord testified that despite receiving the 10 Day Notice, the tenant did not send any payment toward the outstanding arrears and has not paid any monies for the subsequent months of April 2021, May 2021, June 2021 or July 2021.

I asked the tenant whether he had money to pay the rental arrears to which the tenant indicated he did not and alluded to the loss of income as a result of a work place accident, other expenses such as high hydro bills, and purchasing hay for his horses as the reason he does not have rent to pay the landlord.

The tenant also stated that he has made repairs and improvements to the property at his own expense because he intended to purchase the property. The landlord responded that she instructed the tenant to not make any repairs without the express written permission of the landlord and that if she did give permission she would deal with the contractor and make payment directly to the contractor. The landlord testified that, to date, she has not been provided any invoices to show what the tenant has expended, if anything; however, the landlord stated she is willing to entertain

reimbursing the tenant upon inspecting the property and receiving a copy of an original invoice from a contractor.

Before the hearing ended, I gave the parties my preliminary finding that the tenancy has ended for unpaid rent and the landlord is entitled to an Order of Possession. I explored the effective date for an Order of Possession with the parties. The landlord stated she is willing to permit the tenant possession until July 31, 2021 but that she needs to regain possession by August 2021 as her daughter will be coming to help the landlord with the property before winter arrives. The tenant stated he suffers from numerous disabilities and has approximately 30 vehicles stored on the property as well as horses. The tenant stated he needs at least three months to vacate.

Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements, rental units, and other residential property. Section 1 of the Act provides the definition of “tenancy agreement” to mean an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this case, the tenant was given possession of the rental unit under an oral agreement. The parties provided consistent testimony that the tenancy commenced in October 2016 and the tenant was required to pay the landlord rent of \$700.00 in exchange for his right to use and possession of the property.

With respect to the tenant’s position that he intends or intended to purchase the property from the landlord, I refer to an excerpt from Residential Tenancy Policy Guideline 27: *Jurisdiction*. On page 5, it provides a section on transferring ownership, as follows:

2. TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction.

In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;
- there was a right to purchase in a tenancy agreement and whether it was exercised.

I heard consistent statements from both parties that they agreed the tenant would pay "rent" to the landlord every month in the amount of \$700.00. Neither party indicated this payment was to be applied to a purchase price for the property. I heard undisputed statements that to purchase the property would require payment of \$260,000 to the landlord and documents to be executed, which did not happen, despite several months passing. Therefore, I find there to be insufficient evidence to demonstrate that ownership of the property transferred to the tenant or that the tenant has an interest in the property higher than the right to use and occupancy as a tenant.

In light of the above, I find the parties have a landlord/tenant relationship to which the Act applies and that I have jurisdiction to resolve the dispute concerning unpaid rent and the end of the tenancy.

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.

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 or Utilities. 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.

The tenant was required to pay rent of \$700.00 every month and the tenant has failed to do so for the months of September 2019 onwards with the exception of three payments. It was undisputed that as of March 1, 2021 the sum of unpaid rent amounted to \$9000.00.

The landlord issued a 10 Day Notice on March 9, 2021 and the tenant received it on April 8, 2021. The tenant did not pay anything toward the rental arrears and did not file to dispute the 10 Day Notice. However, out of an abundance of fairness, I have considered the tenant's arguments with a view to determining whether there 10 Day notice is unenforceable.

The effective date on the 10 Day Notice is incorrect as it does not afford sufficient time for the tenant to receive the 10 Day Notice; however, as provided in section 53 of the Act, an inaccurate effective date does not invalidate a notice to end tenancy. Rather, the effective date automatically changes to comply with the Act.

I also heard that the street address of the rental unit was transposed on the 10 Day Notice; however, the tenant stated he knows the correct address and what it should have read. As provided in Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of a Notice to End Tenancy*:

Section 68 of the [Act] provide that if a notice to end a tenancy does not comply with section 52, an arbitrator may amend the notice if satisfied that

- the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- in the circumstances, it is reasonable to amend the notice.

B. AMENDING A NOTICE TO END TENANCY

In determining if a person should have known particular information that was omitted from a notice to end tenancy, an arbitrator may consider whether a reasonable person would have known this information in the same circumstances. In determining whether it is reasonable in the circumstances to amend the notice, an arbitrator may look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

Given the tenant stated he knows the rental unit address and was aware the landlord made a typographical error in writing the address, I find the tenant would not be unfairly prejudiced if the address is amended. Accordingly, I amend the 10 Day Notice to reflect the correct street address, pursuant to section 68 of the Act.

As for the amount of the rental arrears appearing on the 10 Day Notice, I am satisfied the amount accurately reflects the unpaid rent. However, due to the Covid-19 pandemic, rent not paid for the "specified period" of March 18, 2020 through August 17, 2020 was subject to a repayment plan. I was not provided a copy of a Repayment Plan and I did not hear that one was given to the tenant. In the absence of a repayment plan being given to the tenant for unpaid rent during the specified period, I find the landlord was limited to demanding rent that had not been paid for the period outside of the specified period. If the rent for the specified period (\$700 x 5 months, or \$3500.00) were excluded, the 10 Day Notice should have indicated the tenant was required to pay \$5500.00 [\$9000.00 less \$3500.00 from the specified period] within five days, or be evicted. The tenant did not make any payment to the landlord after receiving the 10 Day Notice and indicated he does not have much money after suffering loss of income, paying hydro bills and buying hay for his horses. As such, even if the 10 Day Notice read \$5500.00 I was not provided any evidence to suggest the tenant could have paid that amount within five days to continue the tenancy considering he also stated that with an email address for the landlord he may have been able to pay one or two hundred dollars periodically toward the arrears.

The tenant made arguments that the landlord did not provide him with her email address; however, a landlord is not obligated to provide an email address. The tenant had historically made payments by mail and that method of sending payment was still available to him.

As for the tenant's submission that he has made repairs to the property, the tenant did not provide evidence that the landlord agreed he could deduct any monies from rent. The Act does not provide the tenant the right to make deductions from rent for repairs made or paid for by the tenant unless the criteria for paying for an "emergency repair" under section 33 are met, or the tenant obtains authorization from the landlord or an Arbitrator. I was not provided any evidence to suggest the tenant made expenditures for "emergency repairs" and provided the landlord with a copy of a receipt or invoice before withholding rent. Also, the tenant did not have the authorization from an Arbitrator to withhold rent for repairs he made.

In light of all of the above, I find I am satisfied the tenant failed to pay rent that was otherwise due to the landlord, the tenant did not have legal right to withhold rent from the landlord, and the tenant did not pay the rent due to the landlord within five days of receiving the 10 Day Notice. Accordingly, I find the tenancy is at an end due to unpaid rent and the landlord is entitled to regain possession of the rental unit.

Upon consideration of the submissions of both parties with respect to the effective date for the Order of Possession, I provide the landlord with an Order of Possession effective on July 31, 2021 as she requested. Considering no rent has been paid in a year, the tenant received a 10 Day notice in April 2021 and did not make any payment to the landlord, and the landlord provided a reasonable explanation that she needs to tend to the property while she has assistance of her daughter before winter comes, I find it would be unduly prejudicial to the landlord to require her to wait months longer to accommodate the tenant more than she already has.

As for the landlord's monetary claim, since the tenancy has ended, I find the landlord entitled to recover from the tenant all of the unpaid rent of \$9000.00 that was outstanding as of March 1, 2021. Given the tenant's continued occupation of the rental unit to date, without paying any monies for his continued occupation, I find the landlord further entitled to recover loss of rent for the months of April 2021 through July 2021 in the amount of \$2800.00. I also award the landlord recovery of the \$100.00 filing fee paid for this application. Therefore, the landlord is provided a Monetary Order to serve and enforce upon the tenant in the sum of \$11900.00 [\$9000.00 + \$2800.00 + 100.00].

Conclusion

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

The landlord is provided a Monetary order for unpaid and/or loss of rent, plus recovery of the filing fee, in the sum of \$11900.00

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: July 08, 2021

Residential Tenancy Branch