Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR-MT, FFT, MNDCT, RR, PSF / OPR-DR, MNR-DR, FFL**

Introduction

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

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of $2,114.21 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' application for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord provide services or facilities required by the tenancy agreement or law pursuant to section 65;
- more time to make an application to cancel the Notice pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $750 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing. The landlord was represented at the hearing by its building manager ("**AW**") and its office manager ("**AM**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Each party confirmed that it had received the other's notice of dispute resolution package and supporting evidence. I find that all parties have been served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

1) an order of possession;
2) a monetary order for $2,114.21; and

3) recover the filing fee?

Are the tenants entitled to:

1) an order cancelling the Notice;
2) a monetary order of $750;
3) a rent reduction;
4) an order that the landlord provide services or facilities required by the tenancy agreement; and
5) recover the filing fee?

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 parties entered into a written fixed term tenancy agreement starting June 1, 2020 and ending May 31, 2021. Monthly rent listed as $1,750 and is payable on the first of each month. The tenants paid the landlord a security deposit of $875 at the start of the tenancy, which the landlord continues to hold in trust. No move in condition inspection was conducted at the start of the tenancy. AW indicated that the prior building manager suffered an injury which likely caused her to be unable to do one.

The rental unit is located on the third floor of a multi-story apartment building.

SH testified that shortly before the tenancy started there was flood in the building which damaged the rental unit. He testified that the rental unit had not been repaired at the time the tenancy started. SH testified he moved into the rental unit despite this damage because, prior to June 1, 2020, he was living in a hotel and that he needed to move out.

AW agreed that there had been a flood in the building prior to the tenancy starting. However, he testified he understood that all the damage had been repaired prior to the start of the tenancy. He testified that he started working for the landlord on July 15, 2020 (that is, after the tenancy started and the flood occurred).

SH testified that the prior building manager assured him that the flood damage in the rental unit would be repaired. He testified that it has never been repaired. He submitted photos of the rental unit showing a water-damaged floor, rust in the bathtub, cracked caulking, and damaged blinds.

1. The New Unit

SH testified that when AW came on as building manager, AW told him that the tenants would be moved into a different rental unit once it was finished being renovated (the "**new unit**"). SH testified that AW gave the tenants a copy of the mailbox key for this

new unit. In September 2020, AR (who is SH's sister) started the process of changing her mailing address with various government agencies to that of the new unit.

SH testified that he booked movers on three separate occasions (each time at an expense to him of $200) to assist in his move between the rental unit and the new unit. He testified that the move was then disallowed by AW. SH also testified that, in anticipation of the move, he had the hydro bill for the new unit put in his name and incurred costs of roughly $130 over three months as a result. SH testified he gave the Hydro Bill to AW, on the understanding that the landlord would pay for the charges but testified that the landlord did not pay these amounts. AW denied being given the hydro bill.

The tenants did not provide any documentary evidence supporting their monetary claim. I have no receipts, invoices, text messages, emails, or other correspondence supporting this claim.

AW testified that he never told the tenants that they would be guaranteed to be allowed to move into the new unit when the renovations were complete. Rather, he testified that he told them that once the renovations to the new unit was completed, they *may* be able to move in. He testified that, since he started working for the landlord, SH demanded that he be provided with a "renovated suite". AW testified that he did not know why SH was making this demand. He testified that, beyond a door that needed to be fixed in the rental unit, the tenants never asked the landlord to make repairs to the rental unit. He did indicate that he was aware that the rental unit's blinds and floor were damaged, although he denied knowing the extent or nature of the damage.

AW testified that he repeatedly told SH <u>not</u> to make any plans to move into the new unit until AW told him, in writing, that he would be able to move in. AW stated that he provided the tenants with the keys to the new unit so they "could look at it". The mailbox key was attached to the new unit's keychain.

SH testified that, in September 2020, AW told him that his rent could be reduced by $500 per month in acknowledgement of the condition of the rental unit. He testified that there is no documentation supporting this reduction and that the parties did not put the agreement to writing or communicate about it in text message or email. SH testified that he paid $1,750 in monthly rent in October 2021. I asked why he paid this amount if there was an agreement to reduce the rent by $500. He testified that he did not believe the agreement was enforceable, because he did not receive written confirmation of it. He testified that it should be enforced now, because the landlord never allowed him to move into the new unit.

AW denied that he agreed to such a rent reduction. Additionally, he testified that he did not allow the tenants to move into the new unit because, at the time the renovations to the new unit were completed in March 2021, the tenants were significantly in arrears (see below).

2. Tenants' Rent Payments

AM testified that, starting in December 2020, the tenants began having trouble paying rent on time. During the hearing, AW read out the payments made by the tenants, as recording in the tenants' ledger. SH confirmed that these amounts were correct. The payments and amounts due from the tenant, starting in December 2020 and ending in July 2021 are as follows:

Date	Owed	Paid	Balance
01-Dec-20	$1,750.00		$1,750.00
04-Dec-20		$1,121.00	$629.00
29-Dec-20		$1,975.00	-$1,346.00
01-Jan-21	$1,750.00		$404.00
01-Feb-21	$1,750.00		$2,154.00
01-Feb-21		$939.79	$1,214.21
01-Mar-21	$1,750.00		$2,964.21
22-Mar-21		$850.00	$2,114.21
01-Apr-21	$1,750.00		$3,864.21
01-Apr-21		$450.00	$3,414.21
16-Apr-21		$3,414.21	$0.00
01-May-21	$1,750.00		$1,750.00
01-May-21		$1,100.00	$650.00
14-May-21		$650.00	$0.00
01-Jun-21	$1,750.00		$1,750.00
01-Jun-21		$970.00	$780.00
15-Jun-21		$800.00	-$20.00
01-Jul-21	$1,750.00		$1,730.00
10-Jul-21		$1,100.00	$630.00
21-Jul-21		$650.00	-$20.00
Total	**$14,000.00**	**$14,020.00**	**-$20.00**

At the start of the hearing, the landlord advised me that the tenant was in arrears of $630. SH denied this, saying that he had put the final payment in the landlord's office mailbox on July 16, 2021. AW testified he checked the mailbox "about a week ago" and that there was payment from the tenant in there at the time. At the end of the hearing, I asked AW to check the landlord's office mailbox to see if the payment was in there. He testified that he discovered an envelope with the rental unit number on it on the floor inside the office beside the mailbox. It contained a money order dated July 21, 2021 for $650. He stated he was satisfied that this represented the payment of the arrears owed by the tenants. However, he noted that the money order was issued five days after the

SH stated he delivered it to the landlord. AW stated that this is emblematic of SH's poor memory and suggested that SH may have misremembered other aspects of conversations between the two of them.

The parties confirmed that the landlord issued four Notices to End Tenancies for Non-Payment of Rent, all posted on the door of the rental unit, as follows:

1) On March 3, 2021 specifying arrears of $2,964.21 (the "**March Notice**");
2) On April 3, 2021 specifying arrears of $3,414.21 (the "**April Notice**");
3) On June 3, 2021 specifying arrears of $780.00 (the "**June Notice**"); and
4) On July 3, 20201 specifying arrears of $1,750.00 (the "**July Notice**").

(collectively, the "**Notices**")

The landlord misspelled SH's first name (which has two common spellings of which the landlord used the incorrect version) on the March Notice. Additionally, the March Notice was dated March 3, 2020 and specified an effective date of March 13, 2020. SH's first name was misspelled on the April Notice as well. The April Notice was dated April 3, 2021 but specified an effective date of April 13, 2020. The June and July Notices do not contain any such errors. They specified an effective date of June 13, 2021 and July 13, 20201 respectively.

The tenants did not apply to dispute the March Notice. They applied to dispute the April Notice on April 7, 2021. On this application, they asked for additional time to dispute the April Notice for the following reason:

> I received this notice on a Sunday. As holiday weekend, your office is closed on Easter Monday.
>
> | DD | M | Year |
> |---|---|---|
> | 03 | 04 | 2021 |

SH testified that both tenants are on a fixed income and that he receives Workers Compensation Benefits. He testified he receives these benefits every two weeks, and that it is difficult for him to pay his rent on time.

3. Provision of Services and Facilities

The tenants have also applied for an order that the landlord provide them with services or facilities. In their application they described this portion of their claim as follows:

> Fan above kitchen stove and no cover. Fan in bathroom works and no cover. All doors in apartment don't close properly. Sliding door falls out. Blinds need to be replaced. Four sets. Bathroom sink clogs constantly. Kitchen sink doesn't hold water. Apartment wasn't painted properly. Floor lifting water damage from

apartment upstairs period from before we first moved in. Screws lifting from transition strips on floors.

AW testified that, prior to receiving the tenants' application materials he was largely unaware of the issues with the rental unit. He testified that, had the tenants advised him of the nature and extent of the damages, and asked that they be repaired, the landlord would have repaired them promptly.

Analysis

1. Order of Possession

Section 46 of the Act, in part, states:

> **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.

Based on the evidence presented to me at the hearing, I find that the landlord served the Notices on the tenants by posting them on the door of the rental unit as described above. Section 90 of the Act states that a Notice is deemed served on a tenant three days after it is posted on the door of the rental unit.

So, as the March Notice was posted on March 3, 2021, it is deemed to have been served on March 6, 2021. Accordingly, per section 46(4) of the Act, the tenants must pay the full amount of arrears listed on it, or dispute it, within five days (that is, March 11, 2021). The tenants did not do either of these things. As such, per section 46(5) of the Act, the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of March Notice, so long as the March Notice meets the section 52 requires for form and content.

The March Notice contains three errors:

1) The misspelling of the SH's first name;
2) An effective date of March 13, 2020 (which predates the tenancy); and
3) An issued date of March 3, 2020 (which predates the tenancy).

Section 53 of the Act functions the automatically change incorrect effective dates. It in part, states:

> **Incorrect effective dates automatically changed**
> **53**(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
> (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

As such, the effective date of the March Notice is automatically changed from March 13, 2020 to March 16, 2021 (10 days after the March Notice was deemed served).

For the same reasons, the effective date of the April Notice is automatically changed from April 13, 2020 to April 16, 2021.

Section 68(1) of the Act grants an arbitrator the authority to amend a notice to end tenancy. It states:

> **Director's orders: notice to end tenancy**
> **68**(1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
>
> (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
> (b) in the circumstances, it is reasonable to amend the notice.

I find that the tenants should have known that March Notice (and April Notice, for that matter) were addressed to tenant SH, notwithstanding his first name was misspelled. His first name is commonly spelled one of two ways. He spells it one way, the landlord spelled it (in error) the other way. I do not find that this could have reasonably caused SH any confusion when receiving the March Notice. He knew or should have known it was addressed to him. Similarly, I do not find that the landlord incorrectly listing the date the March Notice was issued as March 3, 2020 (as opposed to 2021) caused the tenants any confusion. The tenants did not occupy the rental unit in March 2020. They ought to have reasonably known that the landlord made an error of a single digit, especially in light of the fact that they knew that they received the March Notice in March of 2021. In the circumstances, I find it reasonable to amend the March Notice to change the date it was issued from March 3, 2020 to March 3, 2021.

As such, I find the March Notice complies with section 52 of the Act. Pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the March Notice (March 16, 2021). I grant the landlord an order of possession for the rental unit effective August 31, 2021.

I note that the tenants have only applied to extend the time in which they may dispute the April Notice. Such an extension is not required, as the April Notice is deemed served on April 6, 2021, and the tenants disputed it on April 7, 2021.

In the event that I am incorrect in amending the March Notice, I would find that the landlord is entitled to an order of possession on the basis of the April Notice, as, even though the tenants disputed the Notice within the required time frame, they were unable to provide a valid reason why they failed to pay rent when it was due. Indeed, they agreed that they regularly in arrears due to being on a fixed income and only being able to pay rent on a bi-weekly basis.

The fact that the tenants paid the balance of the arrears owning on April 16, 2021 does not have the effect of cancelling the April Notice. A complete payment of arrears will only cancel a Notice is it is done within five days of a Notice being deemed served (in this case, by April 11, 2021). TO allow a full payment of the arrears after this date to have the effect of cancelling the April Notice would deprive section 46(4)(a) of the Act of any meaning.

On this basis, I would also issue an order of possession (as the effective date of the April Notice is automatically corrected by section 53, and as I have ordered SH's first name to be corrected).

In the further event I am mistaken in correcting SH's name on the April Notice, I would still issue an order of possession on the bases of the June and July Notices. As with the April Notice, the tenants failed to pay the full amount of arrears owed within five days of the June or July Notices being issued. They have not provided any valid reason for failing to pay their rent when it is due. An inability to pay is not a valid reason.

For the foregoing reasons, I order that the tenants provide the landlord with vacant possession of the rental unit no later than August 31, 2021 at 1:00 pm.

2. Landlord's Monetary Claim

Based on the evidence presented at the hearing, I find that the tenants are no longer in arrears. Accordingly, I dismiss this portion of the landlord's application without leave to reapply.

3. Provision of Services and Facilities

As I have issued an order of possession to the landlord and as the tenancy will soon be over, I decline to order that the landlord make provide the services or facilities (or make the repairs) sought by the tenants.

4. Tenant's Monetary Order

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.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> (the "**Four-Part Test**")

As such, the tenants bear the burden to prove it is more likely than not that that the landlord failed to comply with the Act or tenancy agreement; that they suffered a quantifiable loss as a result; and that they acted reasonably to minimize their loss.

The tenants provided no documentary evidence which corroborated their testimony that they incurred the cost of $200 for movers on three separate occasions. Such evidence should have been relatively easy to provide (an invoice, receipt, email or text message between the movers and the tenants, or written statement from the movers). As such, I find that the tenants have failed to prove it is more likely than not that they satisfy the

second and third parts of the Four-Part Test. I dismiss this portion of their application, without leave to reapply.

For similar reasons, I dismiss the tenants' claim for compensation for the new unit's hydro bill. The tenants have no provided any evidence to corroborate SH's testimony that they incurred a loss of $130. Additionally, I am unsure what part of the Act or tenancy agreement the landlord allegedly breached which would have given rise to this portion of the tenants' claim. Any agreement breached by the landlord would seem to have been one separate from the tenancy agreement.

Finally, I find that the tenants did not act reasonably to minimize their loss. I am unsure why, if they were improperly denied the ability to move into the new unit, the tenants did not immediately terminate the new unit's hydro. Similarly, I do not find it reasonable for the tenants to have transferred the hydro into their name before taking possession, or receiving confirmation that they could take possession, of the new unit.

I found AW's testimony that he never guaranteed that the tenants would be able to move into the rental unit, or that he ever received the hydro bills for the new unit from the tenants, to be credible. I find it more likely than not that he indicated to SH that it might be possible for the tenants to move into the new unit, but I do not find that he committed the landlord to such a course of action. I accept his testimony that he cautioned SH not to make any plans to move into the new unit until AW told him, in writing, that he would be able to move in.

As such, I find that this portion of the tenants' monetary claim fails to meet the requirements of the Four-Part Test. I dismiss the tenants' monetary claim without leave to reapply.

5. Rent Reduction

I do not find that any agreement existed between the parties to allow the tenants to reduce their rent by $500 per month. SH indicated that he did not believe the agreement he alleged he entered into with AW was enforceable. AW denied its existence. The tenants continued to make full rental payments after this agreement was purportedly entered into. In its ledger, the landlord recorded rent owing in the full amount set out on the tenancy agreement (as opposed to a reduced amount). I do not find that the tenant has proved it is more likely than not that any agreement to reduce the rent was entered into.

Additionally, as I have ordered that the tenancy will end at the end of August 2021, I decline to make any order to reduce the rent on an ongoing basis due to the condition of the rental unit.

I dismiss this portion of the tenants' application, without leave to reapply.

6. Filing Fees

As the landlord has been mostly successful in its application, I order that the tenants reimburse it the filing fee.

As the tenants have been mostly unsuccessful in their application, I decline to order that the landlord reimburse them the filing fee.

Conclusion

I dismiss the tenants' application, in its entirety, without leave to reapply.

I dismiss the landlord's monetary claim without leave to reapply.

Pursuant to sections 72 of the Act, I order that the tenants pay the landlord $100, representing the return of the filing fee.

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by August 31, 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: August 11, 2021

Residential Tenancy Branch