



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, LRE, FFT

Introduction

On May 12, 2021, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) issued May 9, 2021, for a monetary order for compensation for monetary loss or other money owed, for a rent reduction for repairs, services or facilities agreed upon but not provided, to suspend or set conditions on the landlord's right to enter the rental unit or site, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord's Spouse, and their translator (the 'Landlord'), the Tenant and the Tenant's Advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for a monetary order for compensation for monetary loss or other money owed, for a rent reduction for repairs, services or facilities agreed upon but not provided, and to suspend or set conditions on the landlord's right to enter the rental unit or site.

Issues to be Decided

- Should the Notice issued on May 9, 2021 be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on May 1, 2017, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The parties agreed that rent in the amount of \$3,746.00 was to be paid by the first day of each month, and the Landlord had been paid a \$1,800.00 security deposit for this tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that this tenancy ended on July 15, 2021, when the Tenant vacated the rental unit in accordance with a Two-month notice to end tenancy for the Landlord's use of the property that had been served to the Tenant on April 28, 2021. Both parties agreed that the one-month compensation due to the Tenant pursuant to section 51 of the *Act* had not been paid to the Tenant.

The Landlords testified that they initially served the Tenant with a 10-Notice on May 9, 2021, but that they made an error on that Notice and served the Tenant with a new 10-Day notice on May 19, 2021, by personal service. The 10-Day Notice had an effective date of May 29, 2021, and an outstanding rent amount of \$3,746.00. The Tenant submitted a copy of the 10-day Notice into documentary evidence.

The Landlords also testified that the Tenant had not paid as indicated on the outstanding May 2021 and had also not paid the rent for June and July 2021. The Landlord testified that they no longer require an order of possession for this tenancy but that they are requesting a monetary order for the outstanding rent in the amount of \$8,065.00, consisting of \$3,746.00 in rent for May 2021, \$3,746.00 in rent for June 21, \$1873.00 in rent for the first 15 days of July 2021, less \$1,300.00 that they agree they owed the Tenant.

The Tenant testified that they agreed that they owed the rent for May 2021 but that only 2,446.00 was outstanding as the Landlord had agreed to the \$1,300.00 in compensation to the Tenants for that month. The Tenant submitted an email agreement between them and the Landlord agreeing to the compensation into documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.

I accept the Landlord's testimony that they initially served the Tenant with a 10-Notice on May 9, 2021, but that they made an error on that Notice and served the Tenant with a new 10-Day notice on May 19, 2021, by personal service. Pursuant to section 46 of the Act, the Tenant had five days to dispute this Notice. I find the Tenant had until May 24, 2021, to file their application to dispute the Notice. I have reviewed the Tenant's application and noting that they filed their application on May 12, 2020, within the statutory time limit.

I accept the testimony of the Tenant that the Landlord did owe the Tenant \$1,300.00 and that this amount was to be deducted from the May 2021 rent; however, I find that the remain a balance of \$2,446.00 in rent due for May 2021, for this tenancy.

I accept the agreed-upon testimony of these parties that the Tenant had not paid this remaining outstanding rent within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 (1) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant failed in their attempt to dispute the Notice. However, as this tenancy has already ended in accordance with a Two-Month Notice, and the parties agreed that the Tenant moved out of the rental unit as of July 15, 2021, I find that an order of possession is no longer required for this tenancy.

Additionally, pursuant to section 55 (1.1), I find that the Landlord has established an entitlement to a monetary award for the outstanding rent in the amount of \$4,258.60, consisting of \$2,446.00 in rent for May 2021, \$3,746.00 in rent of June 2021, \$1,812.60 in rent for July 2021, at the per diem rate of \$120.84 per day, less \$3,746.000 in compensation due to the Tenant pursuant to section 51 of the *Act* for the Landlord issuing the Two-Month Notice to end tenancy for their own use.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application to dispute the Notice, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Tenant's application to cancel a 10-Day Notice, and to recover the filing fee for this application is dismissed without leave to reapply.

I grant the Landlord a **Monetary Order** in the amount of **\$4,258.60**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: September 20, 2021

Residential Tenancy Branch