



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oliver Heights
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, DRI, RR, LRE, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on June 9, 2021, for monetary compensation in the amount of \$86,674.37, to suspend or set conditions on the landlord’s right to enter the rental unit, to have the landlord comply with the Act, to dispute a rent increase above the allowable amount, to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

At the outset of the hearing, I had determined SG is not a tenant under the Act, as they are not on the tenancy agreement nor has there been any amendments to that agreement to include them as a tenant. Therefore, I find SG has no right or obligations under the Act. I have removed SG from the style of cause.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings.

As the tenant's amended monetary claim exceeds the amount of my authority the tenant is a liberty to apply to Supreme Court for relief. The balance of the tenant's claim is dismissed with leave to reapply; however, they are only relevant if the tenancy should continue.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on April 17, 2017 between the tenants DP and LN and the landlord. The rent was \$1.00 per month if either of the tenants were working for the landlord. If neither of the tenants were working for the landlord then rent was set at \$1,000.00 per month.

On January 18, 2021 the tenant LN entered into an agreement to end the tenancy effective February 15, 2021. That agreement would be extended to March 15, 2021, only if the tenant paid the amount of \$1,000.00 for rent. The tenant vacated in February 2021, and no rent has been received since that time.

The landlord's agent testified that they were told that the tenant DP has not lived on the property for an extended period of time. However, after LN vacated the property they discovered DP and SG were living on the property, which they believe to be squatters. Filed in evidence is a letter from LN lawyer say DP vacated the property some time ago.

The landlord's agent testified that they issued the Notice and they had assessed rent at \$3,000.00. The agent stated that tenant has not paid any rent since LN vacated.

The tenant testified that they received the Notice. The tenant stated that they prepaid rent to the landlord on January 31, 2020 in the amount of \$18,500.00 because the landlord's company was having financial trouble. Filed in evidence is a copy of the cheque.

The tenant testified that their last invoiced the landlord for work in September 2020. The tenant stated that they have never vacated the premises and it has been a long time since they spoke to their co-tenant LN.

The landlord's agent argue that the cheque between the tenant's company and the landlord's company in January 2020 had nothing to do with the rent. The landlord stated that the tenants were misusing funds paid by their company at that time, which has in part been paid back, but that issue is now before the Supreme Court. The agent stated rent was \$1.00 at that time and this makes on sense.

Analysis

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

In this case, the tenant was working for the landlord through their own limited company or based on an hourly wage. Rent was \$1.00 per month while working under contract with the landlord and would increase to \$1,000.00 per month when their working relationship ended, which was sometime in September 2020.

Although there was evidence that DP may have vacated the premises, which DP denied; however, there was no evidence DP had been removed from the tenancy agreement as required by the Act. However, LN entered into an agreement with the landlord on January 18, 2021, to end the tenancy effective February 15, 2021 and that dated would only be extended to March 15, 2021, if rent of \$1,000.00 was paid. LN vacated in February 2021. Under the Residential Tenancy Policy Guideline 13 E states when one tenant mutually agrees to end the tenancy that agreement applies to all co-tenants.

I do not accept the evidence of DP that the \$18,500.00 paid by their company on January 31, 2020 was for future rent payable. This is not logical when their employment had not ended until sometime in September 2020 and their rent at that time was \$1.00. I find it more likely than not that this was related to their business transactions between the two parties' companies which is outside of my authority and this issue can be dealt with by the Supreme Court.

Furthermore, if this was true why would the co-tenant LN agree to pay to the landlord \$1,000.00 by February 15, 2021, if rent had been paid in advance. I find the tenant evidence does not have the ring of truth.

In this case, I am not satisfied the landlord is entitled to the amount of \$3,000.00 per month for rent as the agreement show \$1,000.00. The tenant was served with the Notice for unpaid rent for March, April, May, and June 2021 and was obligated to pay

\$1,000.00, which they did not pay. The tenant has not paid any rent since LN ended the tenancy and vacated.

Based on the above, I find I must dismiss the tenant's application to cancel the Notice as I am satisfied that rent in the amount of \$1,000.00 was not paid for any of the months listed in the Notice and no subsequent rent has been paid.

I have reviewed the Notice I find the Notice is completed in accordance with section 52 of the Act and is valid. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find the tenant has not paid rent for March, April, May, June, July, August, September, and October 2021. I find the landlord is entitled to a monetary order for the unpaid rent in the amount of \$8,000.00, pursuant to section 55(1.1) of the Act. This order may be filed in the Provincial Court(Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent.

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: October 18, 2021

Residential Tenancy Branch