



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenant: CNR, MNDCT
Landlords: MNDL-S, OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- a monetary order for money owed pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing packages (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlords and tenant were duly served with each other’s applications. The tenant confirmed receipt of the landlords’ evidentiary materials for this hearing. Accordingly, I find the tenant duly served with the landlords’ evidentiary materials.

Preliminary Issue – Tenant’s Evidence

The landlords testified that they did not receive any evidentiary materials from the tenant. The tenant testified that they were not aware that they were required to serve the landlords with a copy of their evidence, although they did upload evidence for consideration for this hearing. Rule 3.14 of the RTB’s Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. As the landlords were not served with the tenant’s evidentiary materials for this hearing, the materials submitted by the tenant will be excluded for the purposes of this hearing.

Preliminary Issue – Service of Landlords’ Amendment

The landlords had filed an amendment for their application on September 17, 2021. The tenant disputes having been served with the package, which the landlords testified was posted on the tenant’s door as well as sent by way of registered mail.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

As it was disputed by the tenant that they had received the landlords’ amendment package, and as they did not have the opportunity to review or respond to the amendment, the package will be excluded and not considered as part of the landlords’ application.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlords’ request to amend their original application from \$250.00 to \$3,650.00 to reflect the unpaid rent that became owing by the time this hearing was convened. Counsel for the landlords requested that November 2021 rent be included in the landlords’ claim as well. As the tenant has until November 1, 2021 to

make this rent payment, and as the hearing took place on October 19, 2021, before the November 2021 rent is payable, this request was denied.

Preliminary Issue – 10 Day Notices to End Tenancy

The landlords testified that the tenant was served with two, 10 Day Notices to End Tenancy. The first 10 Day Notice was served on June 2, 2021, and a second 10 Day Notice was served on August 5, 2021, after the landlords had filed this application. The tenant confirmed receipt of the first 10 Day Notice dated June 2, 2021, but disputes having received the second 10 Day Notice. The landlords confirmed that they wished to proceed with the hearing on the basis of the 10 Day Notice dated June 2, 2021.

Furthermore, as noted above, even though the landlords had filed an amendment to add the second 10 Day Notice to their application, as noted above, I am not satisfied that the tenant was served with this amendment. Accordingly, the hearing proceeded on the basis of the 10 Day Notice dated June 2, 2021 only. No findings will be made in relation to the second 10 Day Notice dated August 5, 2021.

Preliminary Issue – Unrelated Claims

In addition to the applications pertaining to the landlords' notice to end tenancy, both parties had filed for additional claims, including applications for monetary compensation.

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the 10 Day Notice and the continuation of this tenancy are not sufficiently related to the applications for monetary compensation and other claims. As the time allotted is not sufficient to allow the other claims to be heard along with the application to cancel the 10 Day Notice to End Tenancy and application to recover the unpaid rent, I exercise my discretion to dismiss the applications unrelated to the 10 Day Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2016 between the two parties. Both parties testified that this was a verbal agreement, and monthly rent was set at \$850.00, payable on the first of the month. The landlords testified that the tenant paid a security deposit in the amount of \$250.00, which they still hold. The tenant testified that they had paid \$400.00.

The tenant testified that as there were two bedrooms in the rental suite, the tenant had various roommates throughout this tenancy. The tenant testified that the landlords had adjusted the monthly rent on the basis that the tenant had roommates, and this was done without the tenant being served with any Notices of Rent Increase. The tenant testified that as of June 1, 2016, the rent was increased to \$1,050.00 per month, and the rent was increased again to \$1,200.00 per month as of January 1, 2021. The tenant testified that the current roommate, VS, pays their portion of the rent directly to the landlords, which is currently \$500.00 per month, while the tenant paid the landlords the remaining \$700.00.

The landlords submit that they had never allowed the tenant to take on roommates, and testified that both parties had mutually agreed that the VS could stay in the rental unit as a co-tenant, and therefore was responsible for paying the landlords rent in the amount of \$500.00 per month.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid rent on June 2, 2021 for failing to pay the entire amount of the tenant's portion of the monthly rent for June 2021, which the landlords testified should have been \$850.00. The landlords testified that on or about June 4, 2021, the tenant paid the landlords \$600.00 towards the monthly rent, but failed to pay the remaining \$250.00. The landlords testified that the tenant has not paid any rent since that date and now owes \$3,650.00 in outstanding rent as set out in the table below:

Item	Amount
Unpaid Rent for June 2021	\$250.00

Unpaid Rent for July 2021	850.00
Unpaid Rent for August 2021	850.00
Unpaid Rent for September 2021	850.00
Unpaid Rent for October 2021	850.00
Total Monetary Order Requested	\$3,650.00

The landlords testified that the tenant would frequently pay the monthly late and in partial instalments throughout this tenancy, as supported by the text message communication submitted in the landlords' evidence. The landlords deny that they had ever increased the monthly rent, which remains at \$850.00. The landlords testified that that VS was responsible for their own payment of \$500.00 per month as a co-tenant, and as agreed to by all the parties.

The tenant testified that there were several issues with the payment of rent, and therefore the 10 Day Notice was not valid. The tenant applied to cancel the 10 Day Notice for this reason, and disputes the landlords' monetary claim for unpaid rent. The tenant testified that they had paid the full \$850.00 for June 2021 rent, and that the remaining \$250.00 was paid in cash. The tenant testified that they were unable to provide proof of this payment as the landlords refused to issue receipts. The landlords confirmed that no receipts have been issued for this tenancy, but disputes that the \$250.00 was paid by the tenant. The landlords testified that the tenant has failed to pay any rent since the 10 Day Notice was served, as shown by the last e-transfer received on June 4, 2021 in the amount of \$600.00.

The tenant testified that starting on July 1, 2021, they had started to pay \$500.00 for the monthly rent as they believed that they had right to do so. The tenant testified that they believed that due to the unlawful collection of additional rent, the tenant was entitled to recover at the overpayment of rent, which the tenant believes to be at least \$18,300.00.

Analysis

Section 46(4) of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. In this case, it is undisputed that the tenant was served with the 10 Day Notice on June 2, 2021, and paid \$600.00 on June 4, 2021. The tenant testified that they had paid the remaining \$250.00 in cash, which they did not receive a receipt for as the standard practice of the

landlords were not to provide receipts for cash payments. The tenant testified that in lieu of the receipt they are unable to provide proof payment.

Section 5(3) of the Residential Tenancy Regulation Schedule states that a "landlord must give the tenant a receipt for rent paid in cash." Regardless of whether the tenant has requested a receipt or not, the onus is on the landlord to provide receipts. In consideration of the evidence before me, I find it undisputed that the landlords have never provided the tenant with any receipts during this tenancy. I find that the landlords' failure to comply with the Regulation has left the tenant in a position where they would be unable to provide proof of payment if they had paid in cash, which the tenant testified was the case in this instance. In light of the tenant's sworn testimony that they had paid the remaining \$250.00 in cash within the required 5 days, and in light of the fact that the tenant would not have been provided a receipt for that payment, I find that it would be grossly unfair to transfer the burden of proof for this payment on the tenant. On a balance of probabilities, I find that the tenant had paid the outstanding rent within the required 5 days of being served the 10 Day Notice dated June 2, 2021. Accordingly, I allow the tenant's application to cancel the 10 Day Notice dated June 2, 2021. The 10 Day Notice dated June 2, 2021 is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The landlords had filed an application for a monetary order for unpaid rent. Both parties had agreed that the monthly rent was set at \$850.00 at the beginning of the tenancy. While the tenant testified that the landlords had increased the monthly rent without serving the tenant with a Notice of Rent Increase, the landlords dispute this is the case. The landlords testified that the tenant's portion was always \$850.00, and that the additional amount charged was for the additional roommate or co-tenant.

Section 40 of the *Act* clarifies the definition of a "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

As set out in Section 40, any additional rent for additional occupants is not considered a "rent increase" under the *Act*. I note that there is no written tenancy agreement for this tenancy, and that all agreements have been verbal between the parties. Despite the

absence of a written tenancy agreement, the tenant acknowledged that the additional rent was for additional occupants, and accordingly, I am not satisfied that the landlords have increased the rent in contravention of the *Act*. I find that the tenant's portion of the monthly rent is still \$850.00, which is payable on the first of every month.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I find that the tenant's own testimony is that as of July 1, 2021 they had only paid \$500.00 towards the monthly rent each month. The landlords testified that the tenant has failed to pay any rent for the period of July 1, 2021 through to October 1, 2021. As noted above, I have accepted that the tenant has paid the June 2021 rent in full. For the period of July 1, 2021 through to October 1, 2021, I am not satisfied that the landlords have established that the tenant has not paid any monthly rent, especially in consideration of the fact that no receipts have been issued for cash payments during this tenancy. As the tenant admitted to withholding \$350.00 in rent payments every month for this period, and as I am not satisfied that the tenant had the right to deduct this amount, I find that the landlords are entitled to \$350.00 in outstanding rent for each of the months from July 1, 2021 through to October 1, 2021, for a total monetary order of \$1,400.00. I allow the landlords to reapply in the circumstance that they are able to provide sufficient evidence to support that the tenant had failed to pay the remaining outstanding rent.

As the landlords were only partially successful in their application, I allow the landlords to recover half of the filing fee.

As noted above, the landlords testified that a second 10 Day Notice was served on the tenant on August 5, 2021, which was not considered as part of this application. No findings were made in relation to this 10 Day Notice.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice dated June 2, 2021. The 10 Day Notice is of no force or effect.

I issue a \$1,450.00 Monetary Order in favour of the landlords under the following terms, which allows the landlord to recover unpaid rent of \$350.00 for each of the months of July 1, 2021 through to October 1, 2021, and half of the filing fee for this application.

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.

I dismiss the remaining claims with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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 20, 2021

Residential Tenancy Branch