



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR-MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 11, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2021 (the “April Notice”)
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 03, 2021 (the “June Notice”)
- For more time to dispute the April Notice and June Notice
- To recover the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Property Manager (the “Landlords”). I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the April Notice be cancelled?
2. Should the June Notice be cancelled?
3. Should the Tenant be given more time to dispute the April Notice and June Notice?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The parties agreed on the following. The tenancy started November 15, 2019 and was for a fixed term ending May 31, 2020. The tenancy then became a month-to-month tenancy. Rent is \$1,500.00 per month due on the first day of each month. The Tenant paid a \$750.00 security deposit and \$750.00 pet damage deposit.

April Notice

The April Notice was submitted as evidence and states that the Tenant owed \$1,000.00 which was due April 01, 2021.

The parties agreed the April Notice was served on the Tenant in person April 30, 2021.

In relation to the \$1,000.00 noted on the April Notice, the Landlords testified as follows. The amount owing was calculated as \$1,000.00 at the time the April Notice was issued. However, the record keeping in relation to rent payments was not accurate for the first six to 12 months of the tenancy. The Landlords went through their documentation and the documentation of the Tenant after the April Notice was issued and created the Rental Summary dated September 30, 2021, which is accurate. The Rental Summary dated September 30, 2021 shows that \$2,045.00 was owing when the April Notice was issued. The Tenant was notified one month after the April Notice was issued that the amount on the April Notice was wrong.

The Landlords testified that the Tenant paid \$1,000.00 in rent May 02, 2021 but did not pay the remaining \$1,045.00 that they later determined was also owing.

The Tenant testified that the \$1,000.00 noted on the April Notice was correct and that this was paid May 01, 2021. The Tenant pointed to a Rental Summary they had been provided with a note at the bottom showing the Tenant paid \$1,000.00 on May 02, 2021 and that there was no balance owing.

The Landlords agreed they wrote the note at the bottom of the Rental Summary provided to the Tenant showing the Tenant paid \$1,000.00 on May 02, 2021 and that there was no balance owing.

June Notice

The June Notice was submitted as evidence and states that the Tenant owed \$2,500.00 which was due June 01, 2021.

The parties agreed the June Notice was served on the Tenant in person June 03, 2021.

The Application was filed June 11, 2021. The Tenant testified that the Application was filed late because of the different rental summaries provided and because, as of May 02, 2021, there was no balance owing; however, the June Notice stated that \$2,500.00 was owing.

The Tenant testified that they paid the outstanding rent of \$1,500.00 on June 04, 2021, within five days of being served the June Notice. The Tenant denied that they owed an extra \$1,000.00 as of June 01, 2021. The Tenant pointed out that as of May 02, 2021 there was no rent owing and therefore only \$1,500.00 in rent was due June 01, 2021. The Tenant testified that they made cash payments for rent which have not been accounted for in the Rental Summary dated September 30, 2021. The Tenant testified that they were not provided receipts for all cash payments. The Tenant testified that payments made by H.O.P. are not accounted for in the Rental Summary dated September 30, 2021.

The Landlords testified as follows. They did tell the Tenant there was a zero balance owing as of May 02, 2021; however, they then realised this was incorrect. Even the \$2,500.00 noted on the June Notice is not correct because the Tenant owed \$2,545.00 as shown in the Rental Summary dated September 30, 2021. The next rental payment made after the June Notice was issued was \$1,500.00 on June 04, 2021. They do not agree that cash payments for rent have been made without a receipt being issued.

During the hearing, I noted that the Tenant had submitted proof of rental payments from H.O.P. with a total of 14 payments made between 2019 and 2021. I also noted that the Rental Summary dated September 30, 2021 only includes seven payments from H.O.P. I asked the Landlords about the discrepancy. The Landlords said they only had proof of seven payments from H.O.P. which are noted on the Rental Summary dated September 30, 2021. It became clear that the Landlords had only accounted for the payments noted on the first page of the document from H.O.P. and not on the second page of the document from H.O.P. At first, the Landlords took the position that the Tenant did not provide the second page of the document from H.O.P.; however, the Landlords later determined that they had received this. The Landlords then took the position that the additional seven payments from H.O.P. were included in the Rental Summary dated September 30, 2021 but were lumped in with the Tenant's payments rather than shown as separate payments like the remaining seven payments were shown. The Landlords could not point to documentation to support their position that the additional seven payments from H.O.P. were included in the Rental Summary dated September 30, 2021 but were lumped in with the Tenant's payments. The Landlords also testified that they had given the Tenant credit for earlier rental payments even though these earlier payments could not be verified.

I note that the Landlords submitted bank records to support their position about unpaid rent. The bank records only date back to September of 2020 and only show six of the payments from H.O.P.

The Landlord sought a Monetary Order for \$2,545.00 in unpaid rent in their written summary.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the "*Act*") states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

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...

(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...

(emphasis added)

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the April Notice and June Notice.

I note at the outset that both parties should be keeping detailed and accurate accounts of rent payments made including the date and amount of the payment. However, the Landlord in particular should have a detailed and accurate account of rent payments made from the start of the tenancy.

Based on the written tenancy agreement and testimony of the parties, I find that the Tenant is required to pay \$1,500.00 in rent per month by the first day of each month.

April Notice

The April Notice states that the Tenant owed \$1,000.00 due April 01, 2021. Based on the testimony of the parties, I accept that the Tenant received the April Notice April 30, 2021. Based on the testimony of the parties, I accept that the Tenant paid \$1,000.00 in rent on May 01 or 02, 2021.

I find that section 46(4)(a) of the *Act* applies and the April Notice has no effect because the Tenant paid the amount of rent owing as shown on the April Notice within five days of receiving the April Notice.

I acknowledge that the Landlords testified that they later realised the amount owing on the April Notice was wrong. However, given the April Notice stated that the Tenant owed \$1,000.00 in rent, the Tenant was only required to pay \$1,000.00 within five days of receiving the April Notice to cancel it pursuant to section 46(4)(a) of the *Act*.

Further, I am not satisfied based on the evidence provided that the Landlord's current record of rent payments, the Rental Summary dated September 30, 2021, is accurate because the Tenant has provided reliable and credible documentary evidence of 14 rent payments from H.O.P. yet the Rental Summary dated September 30, 2021 only includes seven of these. I do not accept that the additional seven payments from H.O.P. were included in the Rental Summary dated September 30, 2021 but lumped in with the Tenant's payments as claimed by the Landlords because the Landlords could not point to documentary evidence to support this and it seems unlikely that the Landlords would have lumped the first seven of the H.O.P. payments in with the Tenant's payments on the Rental Summary dated September 30, 2021 but separated out the last seven payments on the same document. In the circumstances, I am not satisfied the Tenant owed \$2,045.00 when the April Notice was issued as shown on the Rental Summary dated September 30, 2021.

In relation to the Tenant seeking more time to dispute the April Notice, this is a moot point. Pursuant to section 46(4) of the *Act*, the Tenant had five days from receipt of the April Notice to pay the outstanding rent or dispute the April Notice. Given the Tenant paid the outstanding amount shown on the April Notice within five days of receiving it,

the April Notice has no effect pursuant to section 46(4)(a) of the *Act* and the Tenant was not required to dispute the April Notice.

Given the above, I find the April Notice has no effect pursuant to section 46(4)(a) of the *Act* and the April Notice is cancelled.

June Notice

The June Notice states that the Tenant owed \$2,500.00 due April 01, 2021. Based on the testimony of the parties, I accept that the Tenant received the June Notice June 03, 2021. Based on the testimony of the parties, I accept that the Tenant paid \$1,500.00 in rent on June 04, 2021.

The Tenant took the position that they paid the outstanding rent of \$1,500.00 within five days of being served the June Notice as required by section 46(4)(a) of the *Act*. The parties disagreed about what rent was owing when the June Notice was issued.

I find the Landlord has the onus to prove the rent amount owing when the June Notice was issued. I am not satisfied based on the evidence provided that more than \$1,500.00 was owing when the June Notice was issued because I am not satisfied that the Landlords accounted for all 14 of the H.O.P. payments in the Rental Summary dated September 30, 2021 as explained above. The H.O.P. payments that appear to be missing from the Rental Summary dated September 30, 2021 total \$3,255.00 and were all made prior to the June Notice being issued. In the circumstances, the Landlord has failed to prove more than \$1,500.00 in rent was owing when the June Notice was issued.

I accept the Tenant's position that they paid the outstanding rent of \$1,500.00 within five days of being served the June Notice as required by section 46(4)(a) of the *Act*. I note that this accords with the statement written by the Landlords on May 02, 2021 stating there was a zero balance owing as of May 02, 2021. Given this statement, in June, the Tenant would have only owed for the usual rent amount of \$1,500.00. I acknowledge that the Landlords now take the position that the statement of a zero balance was wrong; however, the Landlords have failed to prove this through reliable and credible accounting records.

Given the above, I am satisfied that section 46(4)(a) of the *Act* applies and that the June Notice has no effect. As explained above, the Tenant did not have to dispute the June

Notice and therefore the request for more time to dispute the June Notice is a moot point.

Given the above, I find the June Notice has no effect pursuant to section 46(4)(a) of the *Act* and the June Notice is cancelled.

Section 55 of the Act

The Landlord sought a Monetary Order for outstanding rent. Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], **and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.** (emphasis added)

The Tenant has been successful in their disputes of the April Notice and June Notice as both notices have been cancelled. Therefore, the Landlord is not entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1). Further, I am not satisfied based on the evidence provided that the Landlord is aware of what rent, if any, is currently outstanding.

Filing Fee

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The April Notice and June Notice are cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for the \$100.00 filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 14, 2021

Residential Tenancy Branch