



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, PSF, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Witness PB for the tenant also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Application for cancellation of the Notice

The tenant's application (form RTB-12T) submitted on July 12, 2021 states:

Date you received the Notice: 07-Jul-2021

Please describe the reason(s) you are disputing the 10 Day Notice to End Tenancy:

Rent owed was during "covid" period – no payment offer made by landlord.

I did not pay the rent because of the squatter in our house that the landlady refused to remove for months. I had to eat meals out and often sleep in my car away from then house, as the harassment from the squatter made it impossible to enjoy my rental.

Both parties affirmed they understand the tenant is disputing the July 07, 2021 Ten Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice).

Per section 64(3)(a) of the Act, I accept the tenant's application for cancellation of the Notice under section 46 of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy I must consider if the landlord is entitled to an order of possession and a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

(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.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch 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 claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to an authorization to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started in February 2019. Monthly rent is \$440.00, due on the first day of the month.

The landlord affirmed she attached the Notice to the tenant's front door on July 07, 2021. The tenant confirmed receipt of the Notice on July 07, 2021.

A copy of the July 07, 2021 Notice was submitted into evidence. It indicates the tenant did not pay rent in the amount of \$1,760.00 due on July 01, 2021: "for April, May, June and July 2020 re covid relief deadline to pay back date rent is before July 10/2021." The effective date is "posted on door – July 20/2020 If notice is hand delivered July 17/2021". The Notice indicates the tenant's address is: " unit X moved to Y no permission" (the numbers for X and Y are on the cover page of this decision) and that the tenant must move out of unit Y.

The landlord testified the tenant moved from unit X to Y sometime in December 2020 or January 2021 and that the rent owed is for unit X.

Both parties agreed the tenant did not pay rent in the amount of \$1,760.00 for April, May, June and July 2020.

The landlord stated she is seeking for an order of possession, but not a monetary order.

The landlord did not serve the covid repayment plan.

Analysis

I accept the uncontested testimony that the Notice was served and the tenant received it on July 07, 2021. I find the tenant submitted this application within the timeframe of section 46(4) of the Act.

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

(emphasis added)

I find the Notice does not comply with section 52(b) and (c), as it does not indicate the correct address of the rental unit and there are two effective dates.

As such, I find the Notice does not comply with section 52 of the Act, it is not effective and I cannot issue an order of possession or a monetary order.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Notice dated July 07, 2021 is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

As the tenant was successful in this application, pursuant to section 72(2)(a) of the Act, I authorize the tenant to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment.

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: November 16, 2021

Residential Tenancy Branch