



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR, MNR-DL, FFL, CNR, FFT

Introduction

This hearing was convened in response to cross applications.

On August 06, 2021 the Tenant filed an Application for Dispute Resolution in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on August 24, 2021 two copies of his Dispute Resolution Package were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited two tracking numbers that corroborates this statement. He stated that neither package was returned to the Tenant.

The President stated that the Tenant's Application for Dispute Resolution was not received by the Landlord.

The parties were advised that I accept that the Tenant's Application for Dispute Resolution was properly served to the Landlord by registered mail and that it was possible they were not received by the Landlord due to an error by Canada Post.

The parties were advised that the hearing would be adjourned to provide the Tenant with the opportunity to re-serve his Application for Dispute Resolution. The President stated that he is willing to proceed with the hearing without being served with a copy of the Tenant's Application for Dispute Resolution. As the issue in dispute in the Tenant's Application for Dispute Resolution is closely related to the issues in dispute in the Landlord's Applications for Dispute Resolution, I find it reasonable to proceed with the

hearing even though the Landlord does not acknowledge receipt of the Tenant's Application for Dispute Resolution.

On September 22, 2021 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on September 30, 2021 the Dispute Resolution Package related to the September 22, 2021 filing was personally served to the Tenant. The Tenant acknowledged receipt of these documents.

On October 20, 2021 the Landlord filed a second Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on October 22, 2021 the second Dispute Resolution Package was sent to the Tenant, via registered mail. The Tenant stated that he was never served with documents via registered mail. As the issues in dispute are the same in both of the Landlord's Applications for Dispute Resolution, I will be considering both of the Landlord's Applications for Dispute Resolution even though the Tenant does not acknowledge receiving the second Application for Dispute Resolution. This decision was based, in large part, on the Tenant's testimony that he understood all of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that have been served to him since August would be considered at these proceedings.

On September 22, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on September 30, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 19, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this was an exact duplicate of the evidence that was personally served to the Tenant on September 30, 2021.

On November 08, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, by registered

mail, on November 08, 2021. The President acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of the Tenant's Application for Dispute Resolution be set aside?

Is the Landlord entitled to an Order of Possession on the basis of any of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that have been submitted in evidence?

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The Tenant stated that he moved into the rental unit in 2018.

The President state that the Tenant was living in the rental unit prior to his company taking over management of the building in September of 2020 and prior to the company assuming ownership of the building on March 01, 2021.

The Landlord and the Tenant agree that there is no written tenancy agreement, rent is due by the first day of each month, and that the Tenant is still residing in the rental unit.

The Landlord is seeking compensation for unpaid rent of \$450.00 for March, April, May, June, July, August, September and October of 2021, for a total of \$3,600.00. This is based on the Landlord's submission that rent is \$850.00 per month and that the Tenant only paid \$400.00 when rent was due on each of those months.

The Tenant submits that his rent is \$400.00 per month and that he has paid his rent, in full, when it was due in March, April, May, June, July, August, September and October

of 2021. He stated that he worked for the Landlord and his wages would be paid in cash and/or applied to his bar and food bill at the restaurant/pub on site. He stated that the former landlord never told him he would have to pay more than \$400.00 in rent if he did not work at the residential property.

The parties agree that this tenancy was the subject of a previous dispute resolution proceedings, the file number for which appears on the first page of this decision. Both parties have submitted a copy of the decision from those proceedings, dated July 13, 2021.

In the decision of July 13, 2021, the Arbitrator concluded, in part, that:

- The Tenant has been renting the rental unit since October 1, 2019;
- The Tenant and the previous owner had an oral tenancy agreement which required the Tenant to pay monthly rent of \$400.00;
- The Tenant worked for the previous owner and was compensated for his work;
- The property was sold and the new Landlord did not wish to employ the Tenant;
- The Landlord has “provided insufficient evidence to demonstrate what the initial amount of rent that is owed by the Tenant prior to any deductions;
- The Landlord is “not entitled to unilaterally increase the rent to \$850.00 without clear evidence to demonstrate that the Tenant was required to pay this amount should he not be doing work at the residential property”;
- The Tenant “paid rent to the Landlord in the amount of \$400.00 on March 1, 2021 which was the amount consistently paid by the Tenant to the Landlord throughout the tenancy”;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 15, 2021 is “not valid and is subsequently cancelled”; and
- The tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord submitted a document from the former landlord dated July 23, 2021. In this document the former landlord declared that the Tenant’s rent was “subsidized by about 60% to offset the work he was doing around the building”.

The Landlord stated that the former landlord told him that the Tenant would be required to pay \$1000.00 a month in rent, including utilities, if the Tenant did not work at the residential property.

The Tenant submitted a document from the former manager of the on-site restaurant/pub. In this document the former manager declares that the Tenant made

minor renovations to some of the suites, removed garbage and occasionally worked in the kitchen. He stated that he was compensated with a storage area, a work room, cash, and occasional meals and bar tab.

The Agent for the Landlord stated that he spoke with the former manager of the on-site restaurant/pub and was told that the Tenant paid \$400.00 in rent and that is rent was offset by work he did on the property.

The Landlord submitted a document from a former manager/waitress at the on-site restaurant/pub. In this document the former manager/waitress stated that the Tenant worked at the property in exchange for rent. The President stated that the former manager/waitress worked closely with the bookkeeper and she would know the rent was offset.

The Landlord submitted a document from the current caretaker. The current caretaker declares, in part, that the Tenant's rent is \$850.00 plus utilities; that prior to the Landlord "took over" the Tenant was paying rent of \$400.00 and "the rest he made up for by working at the building; that the Tenant was advised "that we didn't require his services and what his rent would be once we took over the building"; that the Tenant's rent without deductions for work would be "at least \$1,000.00"; and that the Tenant "must pay a fair rental price" for his 2 bedroom unit.

The President stated that the Tenant lives in a two-bedroom unit and that there is one other two bedroom unit in the residential complex, which is currently rented for \$1,050.00 plus utilities.

The Agent for the Landlord stated that on August 03, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 03, 2021, was posted on the Tenant's door. This Notice to End Tenancy declared that the rental unit must be vacated by August 13, 2021.

The Tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was posted on his door on August 03, 2021. This Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is the subject of the Tenant's Application for Dispute Resolution.

The Agent for the Landlord stated that on September 13, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 13, 2021, was posted on the

Tenant's door. This Notice to End Tenancy declared that the rental unit must be vacated by September 21, 2021.

The Tenant acknowledged receiving this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, although he does not recall how/when it was received. This Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is the subject of the Landlord's Application for Dispute Resolution that was filed on September 22, 2021.

The Agent for the Landlord stated that on October 06, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 04, 2021, was personally served to the Tenant. This Notice to End Tenancy declared that the rental unit must be vacated by October 15, 2021.

The Tenant acknowledged receiving this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, although he does not recall how/when it was received. This Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is the subject of the Landlord's Application for Dispute Resolution that was filed on October 22, 2021.

The Tenant stated that he received Ten Day Notices to End Tenancy for Unpaid Rent or Utilities on a monthly basis. He stated that he did not apply to dispute each of the Ten Day Notices to End Tenancy for Unpaid Rent or Utilities, as they are all related to the same dispute over the amount of rent that is due and he believed they would all be considered at the same hearing on December 10, 2021.

Analysis

I find that in the decision of July 13, 2021 the Arbitrator concluded that the Landlord has failed to establish the amount of rent the Tenant was required to pay "prior to any deductions". I interpret this to mean that the Arbitrator concluded that the Landlord did not establish the amount of rent the Tenant agreed to pay if he was not working for the Landlord.

While the previous Arbitrator's conclusion that the Landlord did not establish the amount of rent that Tenant was required to pay "prior to any deductions" could be interpreted to be a final and binding decision, the Arbitrator's finding that the Landlord is not "entitled to unilaterally increase the rent to \$850.00 without clear evidence to demonstrate that the Tenant was required to pay this amount should he not be doing work at the residential property", could be interpreted to conclude that the Arbitrator was leaving it

open for further consideration. I will interpret the previous Arbitrator's decision very liberally and I will consider whether the Landlord has now demonstrated the amount of rent the Tenant was required to pay if he did not work for the Landlord on any given month.

After considering all of the evidence, I find that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400. if he was no longer working at the residential property.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I considered the document from the former landlord, dated July 23, 2021. Although the former landlord declared that the Tenant's rent was "subsidized by about 60%" to offset the work the Tenant was doing around the building, the former landlord does not specifically declare that the parties agreed upon a specific amount of rent if the Tenant stopped working for the former landlord. In my view, the words subsidized "by about 60%" strongly suggests that the parties did not agree on a specific amount of rent in the event the Tenant's employment ended. Rather, I find that the former landlord is estimating the amount of rent that would have been paid.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I placed little weight on President's testimony that the former landlord told him that the Tenant would be required to pay \$1000.00 a month in rent, including utilities, if the Tenant did not work at the residential property. Given this is hearsay evidence, I find that it has less evidentiary value than the document from the former landlord, dated July 23, 2021.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I was heavily influenced by the testimony of the Tenant who declared that his former landlord never told him he would have to pay more than \$400.00 in rent if he did not work at the residential property. I find that this is the most direct and reliable evidence of the conversations the Tenant and the former landlord had regarding rent.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I considered the document from the former manager of the on-site restaurant/pub, in which he declared the Tenant was paid for his labour with a storage area, a work room, cash, and occasional meals and bar tab. I find that this document does not help to establish that the former landlord and the Tenant agreed

on the amount of rent to be paid if the Tenant no longer worked on the residential property.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I placed little weight on the Agent for the Landlord's testimony that the former manager of the on-site restaurant/pub told him the Tenant paid \$400.00 in rent and that his rent was offset by work he did on the property. Given this is hearsay evidence, I find that it has less evidentiary value than the document from the former manager.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I placed little weight on the document from the former manager/waitress at the on-site restaurant/pub, who clearly believes the Tenant worked at the property in exchange for rent. The issue to be established is not whether the Tenant received reduced rent because he worked for the former landlord. Rather, the issue to be determined is how much rent did the Tenant and the former landlord agree to pay if the Tenant was not employed. The manager/waitress does not shed any light on that issue.

In determining that the Landlord has failed to establish that the Tenant agreed to pay monthly rent of more than \$400.00, I placed little weight on the written submission of the current caretaker. While I accept that this submission suggests that the Tenant is paying significantly less than the current market value for the unit, it does not establish that the Tenant agreed to pay more than \$400.00 in rent if the Tenant no longer worked on the residential property nor does it establish that the rent was legally increased to \$850.00.

I have placed no weight on the President's testimony that the Tenant lives in a two-bedroom unit and that there is one other two bedroom unit in the residential complex, which is currently rented for \$1,050.00 plus utilities. The current market value of the rental unit is not relevant to this matter. The relevant issue is the amount of rent the Tenant agreed to pay at the start of the tenancy.

I have reviewed the lists of employment records and bar tabs submitted in evidence by the Tenant. I find these are largely irrelevant as they simply confirm the undisputed evidence the Tenant worked on the property, without establishing the rent that would be due if he did not work on the property.

As it cannot be clearly established that there was an agreement to pay rent of more than \$400.00, I find that the current rent for this rental unit is \$400.00 until it is increased in accordance with the *Act*.

On the basis of the undisputed evidence that the Tenant has paid \$400.00 in rent for March, April, May, June, July, August, September and October of 2021, I find that no additional rent is due for those months. I therefore dismiss the Landlord's application for a monetary Order for unpaid rent.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid by serving a tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. As the Landlord has failed to establish that the Tenant did not pay \$400.00 in rent when it was due in August of 2021, I find that the Landlord did not have the right, pursuant to section 46(1) of the *Act*, to end the tenancy for unpaid rent in August of 2021. I therefore grant the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2021.

As the Landlord has failed to establish that the Tenant did not pay \$400.00 in rent when it was due in September and October of 2021, I find that the Landlord did not have the right, pursuant to section 46(1) of the *Act*, to end the tenancy for unpaid rent in September or October of 2021. I therefore dismiss the Landlord's applications for Orders of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 13, 2021 and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 06, 2021.

Section 46(5) of the *Act* stipulates that if a tenant who has received a notice under this section does not pay the outstanding rent or apply to dispute a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date. I note that this conclusive presumption does not apply in these circumstances, as no rent was outstanding when these Ten Day Notices to End Tenancy for Unpaid Rent or Utilities were served.

As the Landlord has failed to establish the merits of either of the Landlord's Applications for Dispute Resolution, I dismiss the Landlord's application to recover the fee for filing the Landlord's Applications for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution has merit and that the Landlord must compensate the Tenant for the \$100.00 the Tenant paid to file an Application for Dispute Resolution. Pursuant to section 72(2)(a) of the *Act*, I hereby authorize the Tenant to reduce one monthly rent payment by \$100.00, in compensation for this filing fee.

Conclusion

The rent for this unit is \$400.00 until it is increased in accordance with the *Act*. This is a final and binding decision and cannot be the subject to any further Applications for Dispute Resolution.

The Landlord's applications for Orders of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 13, 2021 and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 06, 2021 are dismissed. The Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2021 is granted.

This tenancy shall continue until it is ended in accordance with the *Act*. For clarity, the Landlord does not have the right to serve a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in the future unless the Tenant fails to pay \$400.00 in rent by the first day of each month. To provide further clarity, both parties should understand that any Ten Day Notice to End Tenancy for Unpaid Rent or Utilities served in November and December of 2021 should be considered to have no effect, providing the Tenant paid \$400.00 in rent when it was due for those months.

The Tenant is authorized to reduce one monthly rent payment by \$100.00, in compensation for fee paid to file this Application for Dispute Resolution.

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: December 12, 2021

Residential Tenancy Branch