



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 20, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 16, 2021 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing and appeared for Landlord D.H. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony. I note that both parties laughed at the other’s testimony during the hearing such that I had to explain to both parties that this was inappropriate in a legal proceeding and that if they could not control themselves, they were to put themselves on mute while the other was speaking.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord testified that they received the hearing package from the RTB January 05, 2022 by email. The Landlord confirmed they were prepared to proceed with the hearing on the date set. The Landlord confirmed receipt of the Tenant’s evidence the day before the hearing and stated that they were fine with admissibility of the evidence.

The Tenant confirmed receipt of the Landlord’s evidence.

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 Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord testified as follows. There is a verbal tenancy agreement between the parties. The tenancy started April 01, 2021 and is a month-to-month tenancy. Rent is \$1,500.00 per month due on the first day of each month. There were no security or pet damage deposits paid. The Landlord acts as agent for the owner of the rental unit, Landlord D.H.

The Tenant testified that there is a verbal tenancy agreement between them and Landlord D.H. The Tenant testified that they moved into the rental unit April 07, 2021 but paid rent starting April 01, 2021. The Tenant testified that there was a guarantee that they could live at the rental unit for two years. The Tenant testified that rent is \$1,000.00 per month and has remained this amount throughout the tenancy. The Tenant testified that they paid an additional \$500.00 to board their horse at the property. The Tenant agreed there were no security or pet damage deposits paid.

The Notice was submitted and states that the Tenant failed to pay rent of \$935.00 due December 01, 2021. There is an attachment to the Notice outlining the \$935.00 owing as follows:

November 01, 2021:	Due: \$1,500.00
	Paid: \$1,000.00
	Balance owing: \$500.00

December 01, 2021:	Due: \$1,500.00
	Paid: \$1,065.00
	Balance owing: \$435.00

Total Due: \$935.00

The parties agreed the Notice was served, and received by the Tenant, December 16, 2021.

The Landlord testified that the Tenant paid \$1,065.00 in rent January 01, 2022 and nothing further since being issued the Notice.

The Tenant testified that they are disputing the Notice because rent is only \$1,000.00 not \$1,500.00. In relation to previous payments for more than \$1,000.00 made by the Tenant, the Tenant testified that \$500.00 was for board for their horse and \$65.00 was for gas. The Tenant testified that they removed their horse from the property and therefore stopped paying the \$500.00 for boarding their horse. The Tenant testified that they were not paying the \$65.00 for gas at the start of the tenancy because the furnace was not working and they only paid this once the furnace was repaired. The Tenant testified that they paid \$1,065.00 to the Landlord December 01, 2021 and \$1,065.00 January 01, 2022 after the Notice was issued.

In reply, the Landlord testified that the board for the horse was included in rent, which was \$1,500.00, and that no value was attached to boarding the horse on the property.

I asked the Landlord about a November 26th text message in evidence which states:

I thought I should touch base and remind you that I allotted \$350.00/ month for Ayla's board. I noticed you only paid 1000.00 for your rent last month. It should have been \$1150.00, but we can let it go. This month your heat was 149.00 as well. So the total amount is \$1299.00

The Landlord testified that the above text message was sent to try and make things work between Landlord D.H. and the Tenant. The Landlord referred to the "unofficial four month notice" in evidence to support their position about the rent amount being \$1,500.00.

The Tenant submitted transaction details showing payments made to the Landlords.

The Landlords submitted:

- The Notice
- The attachment to the Notice (outlined above)
- Text messages between the Tenant and the Landlord

- Text messages between the Tenant and Landlord D.H.
- An “unofficial four month notice” not signed by the parties
- Documentation of payments received from the Tenant
- Written submissions

Analysis

Section 13(1) of the *Residential Tenancy Act* (the “*Act*”) states:

13 (1) A landlord **must** prepare in writing every tenancy agreement entered into on or after January 1, 2004. (emphasis added)

Section 26 of 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.

(2) A landlord **must** provide a tenant with a receipt for rent paid in cash.

(emphasis added)

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails 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...

I note that the Landlords should have completed a written tenancy agreement and had the Tenant sign it which would have avoided the issue now before me.

I also note that the Landlords are required to provide the Tenant with receipts for payments made in cash whether the Tenant requests one or not.

There is no issue that the Tenant received the Notice December 16, 2021. The Application was filed December 20, 2021, within five days of the Tenant receiving the Notice as required by section 46(4)(b) of the *Act*.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Landlord and Tenant gave conflicting testimony about the rent amount. I do not find one party more reliable or credible than the other based on their testimony. I find the Tenant's version of events equally probable to the Landlord's version of events. Therefore, I have considered what documentary evidence there is before me to support each position.

I find the November 26th text message in evidence contradicts the Landlord's testimony that no value was given to boarding the horse because the text message states that Landlord D.H. allotted \$350.00 for this. Further, the text message does not support that rent was \$1,500.00 regardless of the horse being on the property because Landlord D.H. asked that the Tenant pay \$1299.00 in total. I acknowledge that the text message does not support the Tenant's position either; however, the Tenant did not reply to the text message or agree with it and in fact the next text message from the Tenant states that they will contact Landlord D.H. about the many issues they need to discuss. In the circumstances, I do not find that the text messages show what the agreement between

the parties at the start of the tenancy was and I find the November 26th text message seems to contradict the Landlord's position at the hearing.

The Landlord relied on the "unofficial four month notice" to support their position. However, the "unofficial four month notice" was drafted by the Landlords and is not signed by the Tenant. I do not find the "unofficial four month notice" to be compelling evidence of the rent amount agreed upon between the parties at the start of the tenancy.

Upon a review of the documentary evidence submitted, I find that the only support for the Landlords' position about the rent amount agreed upon between the parties at the start of the tenancy is self-authored documents and text messages that the Tenant did not reply or agree to. The Tenant has provided a reasonable explanation for the difference in rent payments at the start of the tenancy and in November and December. I do not find that there is compelling evidence contradicting the Tenant's position or supporting the Landlords' position. In the circumstances, I am not satisfied rent is \$1,500.00 per month as claimed by the Landlord.

The Notice was issued solely for unpaid rent from November and December of 2021. However, the Notice is based on rent being \$1,500.00, which I am not satisfied it is. The attachment to the Notice shows the Tenant paid \$1,000.00 for November and \$1,065.00 for December rent and therefore I am not satisfied rent was outstanding when the Notice was issued. Given this, I am not satisfied the Landlords had grounds to issue the Notice and I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. The Tenant is issued a Monetary Order for \$100.00.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant is issued a Monetary Order for \$100.00. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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: January 26, 2022

Residential Tenancy Branch