



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, CNR, RR, RP, FFT
Landlord: OPR-PP, OPN, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties pursuant to the *Residential Tenancy Act* (the “**Act**”).

The tenants applied for:

- cancellation of the landlord’s 10-Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation, or tenancy agreement pursuant to section 67;
- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord applied for:

- an order of possession for non-payment of rent pursuant to section 55;
- an order of possession for cause, for unpaid rent and the tenant has given written notice to end tenancy pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the *Act*.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the “**Rules**”), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue #1 – Tenant’s application

The tenant applied for various and wide-ranging relief. Pursuant to rule 2.3 and 6.2 of the Rules, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

Upon review of the tenant’s application, I find that the primary issue is whether the tenancy will continue or end pursuant to the 10-Day Notice that is the subject to the application. Some of the additional relief is only relevant to the extent that the tenancy continues.

Accordingly, pursuant to rule 2.3 of the Rules, I dismiss the tenant’s following claims with leave to reapply:

- a monetary order for compensation for damage or loss under the Act, regulation, or tenancy agreement pursuant to section 67;
- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The hearing proceeded on the issues tied to the notice to end tenancy signed on December 20, “2022”.

Preliminary Issue #2 – Landlord’s application

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the 10 Day Notice;
- 2) recover the filing fee?

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written month-to-month tenancy agreement starting June 1, 2020. Monthly rent is \$1750.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$875.00 amount. The landlord still retains this deposit. The tenancy agreement was not submitted to file but provided verbally.

The tenant does not deny failing to pay rent but states that circumstances worked against him. The tenant explained that the COVID pandemic has significantly impacted his work since 2020 and he started to fall behind on his rent payments. In 2020 his workplace would "shut the doors" if anyone tested positive for COVID resulting in a shut down. Everyone was having a problem. The tenant stated that while he did not necessarily pay his rent on the first day of the month, the landlord would always get his money.

In October 2021, the landlord issued the first 10-Day Notice for Unpaid Rent. The tenant stated that he offered to pay partial rent to the landlord prior to the landlord issuing the 10 Day Notice but the landlord refused to accept partial payment.

The tenant and landlord agreed to a repayment plan based on the #RTB-14 form that was used for unpaid rent between March 18, 2020 and ending on August 17, 2020.

The tenant stated that he agreed to pay \$600.00 per week with a goal of repaying the rental arrears over ten (10) months. The tenant provided a bank statement confirming the following payments between October and December 2021.

Date	Payment	Running Total
October 08, 2021	\$1400.00	\$1400.00
October 15, 2021	\$ 600.00	\$2000.00
October 29, 2021	\$1000.00	\$3000.00
November 13, 2021	\$ 425.00	\$3425.00
November 26, 2021	\$ 800.00	\$4225.00
December 3, 2021	\$ 800.00	\$5025.00

The tenant stated that in December, he was unable to come up with more rent. He and his family packed up and were prepared to move. On December 23, 2021, the landlord issued the eviction notice and the family came down with COVID, and he was not able to work. After he recovered, the "torrential rains" hit the province and flooded his work projects so he has been without a pay cheque for several months.

The landlord testified that he has been very tolerant with the tenants. He said that rent payments have been paid late since October 2020. No rent was paid in July, August, or September 2021. The landlord did issue a previous 10 Day Notice that he withdrew when the tenant and he agreed to a repayment plan in October. The landlord said that he understands that COVID has hit families hard, and he has tried to be understanding but he, too, has a mortgage to pay and strata fees etc. The landlord submitted a monetary order detailing the rent arrears. Currently, including, rent for February, equals \$9725.00.

Analysis

The tenants acknowledge that they owe significant rental arrears and explained the circumstances that led to the rent “compiling”. I am not unsympathetic to their situation. In October 2021, the landlord and the tenant agreed to a repayment plan of rental arrears and the payment plan collapsed.

Section 46 of the *Act* states 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 tenants receives the notice.

Following this, s. 46(4) says that within five (5) days after receiving a notice under this section, the tenants may either pay the overdue rent, in which case, the notice is of no force or effect, or dispute the notice by making an application for dispute resolution.

Next, s. 46(5) states that if a tenant received a notice under this section and does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit identified in the notice by that date.

The landlord served the 10-Day Notice to the tenants by posting the Notice on the tenants’ door on December 20, 2021. The date on the notice reads, December 23, “2022”. The clerical error has been automatically corrected to reflect the correct year, “2021”. The tenants are deemed served December 23, 2021, three (3) days after the 10-Day Notice was posted. The tenants filed their Application for Dispute Resolution on December 28, 2021, in keeping with the filing requirements of the *Act*.

Although the 10-Day Notice states that the effective date of the Notice is December 30, 2021, given the date the 10 Day Notice was deemed served as set out above and the date upon which rent is due under the tenancy agreement, I find that this date does not comply with the minimum notice period required under s. 46(1) of the *Act*. As a result, I find that the effective date of the 10-Day Notice is automatically corrected to January 2, 2022, pursuant to s. 53 of the *Act*. The landlord confirmed the rental arrears at the time

the notice was issued was \$6225.00. I find the 10 Day Notice complies with the formal requirements of s. 52.

Section 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed. if a notice to end tenancy is compliant with the *Act*.

The tenants failed to pay the rent arrears within the five (5) days allowed under s. 46(4) of the *Act*. The tenants' application to cancel the 10 Day Notice is dismissed, without leave to reapply. The landlord's 10 Day Notice is upheld.

Based on the evidence before me, I accept that the tenants currently owe \$9725.00 in rent arrears. I allow the landlord to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules to reflect the additional unpaid rent for January 1, 2022 and February 1, 2022.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$9725.00. After setting off the security deposit of \$875.00, there is a balance of \$8850.00. I am authorizing the landlord to apply the \$875.00 security deposit in partial satisfaction of rent owed and award the balance of \$8850.00 as compensation rent owed in arrears.

As the landlord was successful in his application, he is entitled to recover the filing fee cost of \$100.00, pursuant to s. 72 of the *Act*.

$$\frac{\$9725.00 \text{ (rent)} + \$100.00 \text{ (filing fee)} - \$875.00 \text{ (security deposit)}}{\$8950.00}$$

I find the tenants are obligated to pay the landlord \$8950.00.

Conclusion

Pursuant to section 55 and 72 of the *Act*, I grant the landlord a **Monetary Order** in the amount of **\$8950.00**. The tenants must be served with this Order as soon as possible. Should the tenants 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**.

Pursuant to section 72(2) of the *Act*, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Pursuant to section 55 of the *Act*, I order that the tenants deliver vacant possession of the rental unit to the landlord within two (2) days of being served with a copy of this decision and attached order(s) by the landlord.

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: February 14, 2022

Residential Tenancy Branch