



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, FFT**

Introduction

This hearing was convened as a result an application made by the Tenant under the *Residential Tenancy Act* (the “Act”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 8, 2021 (“10 Day Notice”) pursuant to section 46;
- compensation of \$1,725.00 for monetary loss or other money owed by the Landlord pursuant to section 72; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72(1).

The Landlord and Tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. A witness (“JT”) attended the hearing when required to provide testimony on behalf of the Tenant.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding (“NDRP”) by registered mail email on November 24, 2021. The Tenant provided the tracking number of the registered mail package to corroborate his testimony on service of the NDRP on the Landlord. The Landlord acknowledged receipt of the NDRP from the Tenant. I find the NDRP was served on the Landlord in accordance with section 89 of the Act.

The Tenant stated he served evidence on the Landlord by registered mail on January 24, 2022. The Tenant provided the tracking number of the registered mail package to corroborate his testimony on service of his evidence on the Landlord. The Landlord acknowledged receipt of the Tenant’s evidence. I find the Tenant’s evidence was served on the Landlord in accordance with section 88 of the Act.

The Landlord stated he served evidence on the Tenant by registered mail on January 28, 2022. The Landlord provided the tracking number of the registered mail package to corroborate his testimony on service of his evidence on the Tenant. I find the Landlord's evidence was served on the Tenant in accordance with section 88 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claim

The Tenant's application included a claim for compensation of \$1,725.00 for monetary loss or other money owed by the Landlord. Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Tenant's application was whether the tenancy would continue or end based on the 10 Day Notice to end tenancy. Accordingly, I find the Tenant's claim for compensation of \$1,725.00 under section 72 of the Act is not sufficiently related to the primary issue of whether the 10 Day Notice to end tenancy are upheld or set aside. Based on the above, I dismiss the Tenant's claim, with leave to reapply, for compensation of \$1,725.00 for monetary loss or other money owed by the Landlord. The Tenant has the option of making another application for dispute resolution to make the claim for compensation pursuant to section 72 of the Act.

Preliminary Issue – Amendment to Increase Monetary Claim for Unpaid Rent

The Landlord testified, as set out in the 10 Day Notice, the Tenants had rental arrears of \$1,000.00 as of November 1, 2021. At the outset of the hearing, the Tenant stated he vacated the rental unit on November 30, 2021. The Landlord stated that, although the Tenant only made a \$1,000.00 payment for the rent due on November 1, 2021, the Tenant placed a stop payment on the cheque for \$1,000.00. The Landlord stated the

Tenant made a payment of \$275.00 on November 14, 2021, with the result that the Tenant owes \$1,725.00 for unpaid rent for November 2021. The Landlord made a request that I amend his application to increase the amount claimed for unpaid rent to \$1,725.00.

Residential Tenancy Branch Policy Guideline 3 ("PG 3") addresses situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement. It also addresses situations where a tenant has unsuccessfully disputed a notice to end tenancy issued for the non-payment of rent or utilities, triggering section 55(1.1) of the Act. PG3 states in part:

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA)

[emphasis in italics added]

I find the Tenant could reasonably have anticipated that the Landlord would request an amendment to the amount of rental arrears stated in the 10 Day Notice when a cheque provided by the Tenant for a rental payment made prior to the date of the 10 Day Notice was cancelled by the Tenant after the date of the 10 Day Notice.

Section 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to Rule 4.2, I amend the Landlord's application to increase the amount of rental arrears claimed by the Landlord to \$1,725.00.

Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 10 Day Notice?
- recover the filing fee for his application from the Landlord?
- If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and a Monetary Order for the Unpaid Rent pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The Landlord stated the tenancy commenced on January 15, 2019, on a month-to-month basis, with rent of \$2,000.00 payable on the 1st day of each month. The Landlord stated the Tenant paid a security deposit of \$1,000.00 and confirmed he is holding the deposit in trust on behalf of the Tenant.

The Landlord testified the 10 Day Notice was served on the Tenant's door on November 8, 2021. I find the 10 Day Notice was served on the Tenants in accordance with section 88 of the Act. Pursuant to section 90, I find the Tenant was deemed to have received the 10 Day Notice on November 11, 2021, being three days after it was served on the Tenant's door.

The Landlord testified that, although the rent due on November 1, 2021, the Tenant only provided him with a cheque for \$1,000.00. The Landlord stated that he issued the 10 Day Notice for the balance of the \$1,000.00 in rental arrears. The Landlord stated, that, after the 10 Day Notice was served on the Tenant, the Tenant cancelled the cheque for \$1,000.00 on or about November 9, 2021. The Landlord stated the Tenant then

provided him with a cheque for \$275.00 leaving rental arrears of \$1,725.00 calculated as follows:

Date	Owed	Paid	Balance
01-Nov-21	2,000.00		\$2,000.00
01-Nov-21		\$1,000.00	\$1,000.00
09-Nov-21		-\$1,000.00	\$2,000.00
14-Nov-21		\$275.00	\$1,725.00
Total	\$2,000.00	\$275.00	\$1,725.00

The Tenant testified the Landlord had failed to perform repairs on the rental unit during the tenancy, particularly in respect of the heating and water systems. The Tenant submitted various text messages to the Landlord regarding repair issues to corroborate his testimony. In a text message dated November 7, 2021, the Tenant stated:

Also I have adjusted amount owing for this month and have deducted \$50 per month as suggested and agreed by you not addressed for the heating issues and having to run my own heaters in rooms to this day. Therefore I owe you \$275 not the \$1000 I have already given you.

The Tenant did not provide any evidence of the agreement with the Landlord for a reduction in rent, nor did he call any witnesses to corroborate his testimony that the Landlord had agreed to a reduction of rent. The Tenant acknowledged he cancelled the \$1,000.00 cheque dated November 1, 2021 and then provided the Landlord with a cheque dated November 14, 2021 for \$275.00.

In reference to the Tenant's text message of November 7, 2021, the Landlord stated he did not agree to a reduction of the rent for November 2021 to \$275.00. The Landlord stated he did agree to a rent reduction of \$50 for part of November 3, 2020 until he could get the heating ducts cleaned. The Landlord stated it took 13 days @\$1.66 per day for a total of \$21.58. The Landlord stated that a replacement thermostat for the heating system was received in December 2020 and the Tenant advised he could install it. The Landlord submitted a copy of the text dated December 10, 2020 to corroborate his testimony. Notwithstanding this understanding, the Landlord stated the Tenant did not install the thermostat and the Landlord installed it himself in September 2021. The Landlord submitted that the failure of the Tenant to install the replacement thermostat, over a period of 8 months, was indicative that the problem with the heating system was not as serious as the Tenant claimed it to be.

Analysis

1. Order of Possession

Sections 46 and 53 of the Act 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 *[form and content of notice to end tenancy]*.
- (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.

The Landlord testified the 10 Day Notice was served on the Tenant's door on November 8, 2021. Pursuant to section 90, I find the Tenant was deemed to have received the 10 Day Notice on November 11, 2021. Pursuant to section 46(4), the Tenant had until November 16, 2021, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenant made his application on November 14, 2021. Accordingly, the Tenant made his application within the 5-day dispute period required by section 46(4) of the Act

The Tenant stated he was excused from paying the rent for November 2021 because the Landlord had failed to perform repairs on the rental unit and that he and the Landlord had reached an agreement to reduce the rent for November 2021 to \$275.00. The Tenant did not provide any evidence of an agreement with the Landlord or call any witnesses to corroborate his testimony. Although the Landlord admitted he had agreed to reduce the rent for November 2020 by \$21.58 until the heating ducts were cleaned, he stated he never agreed to any reduction of rent for November 2021. Due to the lack of credible supportive evidence, I find that on a balance of probabilities there was not agreement for a rent reduction for November 2021.

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.

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due whether or not the landlord complies with the Act, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. The Act stipulates a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

None of the circumstances listed above are presently applicable. The failure of the Landlord to perform repairs is not relevant as it is not a reason a tenant is excused from paying the rent. Although the Tenant testified there was an agreement with the Landlord for the Tenant to pay reduced rent, the Tenant did not submit any evidence, or call any witnesses, to corroborate his testimony. The Act is unequivocal that the obligation to pay rent rests solely with the Tenant and makes no consideration for the circumstances described by the Tenant.

The Tenant acknowledged he provided the Landlord with a cheque for \$1,000.00 dated November 1, 2021 as partial payment of the November 2021. The Tenant acknowledged he cancelled the \$1,000.00 cheque and he provided the Landlord with a cheque for \$275.00. On the date of the 10 Day Notice, the Tenant owed the Landlord \$1,000.00 for rental arrears. I find there was a valid reason for the Landlord serving the Tenant with the 10 Day Notice. Based on the above, I find there is no basis upon which to cancel the 10 Day Notice. Accordingly, the Tenants' application to cancel the 10 Day Notice is dismissed.

Subsections 55(1) and 55(1.1) of the Act state:

- 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.

I have reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenant vacated the rental unit on November 30, 2021. The need for the Landlord to be granted an Order of Possession is now moot.

2. Monetary Order for Unpaid Rent

The Landlord and Tenant agreed the tenancy agreement provided the rent for the rental unit was \$2,000.00 payable on the 1st day of each month. The Tenant acknowledged that he only paid \$275.00 for the November 2021 rent. Pursuant to section 26(1) of the Act, the Tenant owed \$1,725.00 for rental arrears on the date he vacated the rental unit on November 30, 2021. The Tenant must compensate the Landlord this amount. Pursuant to section 55(1.1), if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. Pursuant to section 55(1.1), I order the Tenant pay the Landlord \$1,725.00 in satisfaction of the rental arrears.

Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security deposit of \$1,000.00 from the rental arrears owed by the Tenant, leaving a balance of \$725.00.

As the Tenant has been unsuccessful in his application, I dismiss his claim for reimbursement of their filing fee from the Landlord.

Conclusion

Pursuant to section 67 of the Act, I order that the Tenant pay the Landlord \$725.00 representing the following:

Description	Amount
Rental Arrears	\$1,725.00
Security and Pet Damage Deposits Credit	-\$1,000.00
Total	\$725.00

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary portion of this order, it may be filed with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Tenant's claim for compensation of \$1,725.00 for monetary loss or other money owed by the Landlord is dismissed, with leave to reapply. The Tenant's claim for reimbursement of his filing fee from the Landlord is dismissed without leave to reapply.

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 27, 2022

Residential Tenancy Branch