



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing reconvened as a result of a direct request proceeding in accordance with section 74 of the Act. A Direct Request does not allow for clarification of facts. The tenancy agreement did not provide a date indicating the day in the month on which the regular rent is due. As a result, a participatory hearing was scheduled.

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1400.00 pursuant to section 67;
- 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, however, called into the hearing five (5) minutes late.

The landlord testified he served that the tenant personally with the notice of dispute resolution form and evidence on January 30, 2022, witnessed by a third party. The tenant confirmed this. I find that the tenant was served with this package on January 30, 2022, in accordance with section 88 and 89 of the Act.

The tenant did not submit any evidence in response to the landlord's application for dispute resolution and therefore there were no documents to serve the landlord.

As the tenant called in late, I reiterated the opening remarks, advising 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 landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1400.00;
- 3) recover the filing fee;
- 4) retain the security deposit in satisfaction/partial satisfaction of the monetary orders made?

If the landlords fail in their application, is the tenant entitled to

- 1) an order cancelling the 10 Day Notice.

Preliminary Issue #1- Conduct of the Tenant at the Hearing

The tenant called into the hearing late, resulting in me repeating the opening remarks. In the opening remarks, I explained the speaking order to the parties, advised the parties that I expected them to act in a respectful manner, and not to interrupt one another.

As I addressed procedural matters explaining these matters were important to ensure there was a fair hearing, the tenant became increasingly agitated, interrupted, and started to provide her testimony.

Throughout the hearing, the tenant was confrontational and distracted when questioned. On multiple occasions, she attempted to raise issues that either were not before me (such as allegations the landlord turned off her heat resulting in her spiders dying and cut off her WIFI) or were not relevant to the topic being discussed (the landlord should not have filed an ICBC claim for damages caused when she accidentally drove into his house because the damage to her car was greater than the damage to the house). After each instance of this, I explained to the tenant that we were here to deal with the 10 Day Notice that was issued for unpaid rent.

On more than one occasion, I tried to explain to the tenant that the purpose of this hearing was for me to gather information from both sides so I could determine whether or not the landlord had cause to evict. The tenant continually interrupted me when I tried to explain. I muted the tenant after the second interruption and reiterated my expectation that she does not interrupt me or the landlord and then unmuted her.

The tenant continued to interrupt the landlord's testimony and my questions. I told her she would have an opportunity to respond and to make a note of anything she disagreed with, and she could address it when it was her turn to give her evidence. Within ten seconds of the landlord restarting his testimony, the tenant interrupted and spoke over the landlord requiring me to demand in a forceful manner that she stop interrupting. She told me to 'stop barking at her'.

When the tenant provided her testimony, I tried to clarify a few points (for example, asking her why she said she thought she did not need to file an application for dispute resolution when she received the 10 Day Notice) she responded by saying 'will you just let me talk'. When I tried to re-state my questions, she talked over me. Her answers were often nonresponsive. She continued to make submissions not relevant to the 10 Day Notice.

In my view, the tenant's conduct at the hearing represents "inappropriate behavior" referred to in Rule 6.10 and warranted her muting after several warnings. Rule 6.10 states:

6.10 Interruptions and inappropriate behavior at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I will point out that the tenant's conduct is not determinative in this proceeding. She was given an opportunity to make full submissions as to her reasons that the tenancy should not end based on the 10-Day Notice. I will adjudicate the matter before me based on the landlord's application and submissions and the oral testimony of the tenant.

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 November 1, 2020. The primary on the tenancy agreement was the current tenant's boyfriend and the current tenant was added after. Monthly rent is \$1400.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$700.00 amount and a pet damage deposit of \$700.00. The landlord still retains this deposit.

The landlord issued a 10-Day Notice for Unpaid Rent in the amount of \$1400.00 on November 29, 2021, for rent owed on November 1, 2021. The effective date on the Notice is December 12, 2021.

The landlord testified that the tenant often did not pay rent on time but of late the problem worsened. The landlord stated that in September the tenant paid \$1000.00 of

the \$1400.00 and had an outstanding balance of \$400.00. On October 1, 2021, the tenant did not pay rent on the due date. On October 28, 2021, the tenant's mother paid the outstanding rental arrears in full, doing an e-transfer to the landlord in the amount of \$1800.00.

On November 1, 2021, the landlord did not receive the rent payment. He waited until the end of the month and when no rent was paid, after asking the tenant for the rent on several occasions, the landlord issued the 10-Day Notice for Unpaid Rent. The landlord states that no rent has been paid after the e-transfer on October 28, 2021.

The landlord stated that he sometimes issued rent receipts in the past but was inconsistent about issuing the receipts and has no past receipts. The tenant usually paid cash. The landlord stated that he would accept cash, cheque, e-transfer – it was the tenant's choice to pay cash. He did not demand cash only. The landlord stated that when he spoke to the tenant on December 11, 2021, she refused to pay rent and refused to vacate the rental unit.

The landlord states that the tenancy has become increasingly problematic in addition to the rental arrears. The tenant drove her car into the side of the house resulting in significant damage to the corner of the house; the tenant flushed wipes and tampons down the toilet resulting in the toilet being plugged and the need for a plumber; the tenant hit an interior wall resulting in damage to the gyprock; the tenant disposes of her kitty litter in the back yard; and smokes in the basement suite contrary to the terms of the rental agreement. I explained to the landlord that the only matter before me, was the 10 Day Notice.

The tenant testified that the "big hole and damage to the wall" is in her daughter's bedroom, resulting from a mother/daughter fight. She acknowledged that she hit the house but said that the damage to her car was greater than the damage to the landlord's house and he should not have filed an ICBC claim. She states for the last several months only she and her daughter live in the suite.

The tenant states that the landlord has shut off her heat resulting in the death of her spiders, WIFI was shut off, and the air conditioning turned off in the summer. She said she has not had television or WIFI for a month resulting in a \$1300.00 phone bill.

With respect to rent, the tenant explained that in September, she was unable to pay rent on time. Her boyfriend had a death in the family, and they had to pay for his flight home. She stated she was "a couple days late" paying rent in September. Prior to September, she always paid her rent 1-2 weeks in advance.

The tenant states that rent was paid October 1, 2021, and that the rent paid on October 28, 2021, was for November. The tenant did not explain the additional \$400.00. She also stated in October she "tried to negotiate the rent" but did not respond to questions regarding what she meant.

The tenant testified that the landlord would only accept cash and refused to issue receipts. When she received her welfare cheque, she would withdraw \$2000.00 from the bank, put it in the safe in her rental unit, and pay her bills in cash accordingly including the rent to the landlord. I asked why withdraw all that cash and received no reply. The tenant then stated she 'chose to pay by cash'.

The tenant testified that in November, she tried to involve welfare to pay a portion of the rent, \$1250.00 but the landlord refused to accept the payment. She also stated that her welfare is currently "on hold".

The tenant stated that the landlord did not need to file for dispute resolution. If she couldn't pay all of her rent, then she would make a partial payment and then pay the rest.

The tenant has no record of any payments made to the landlord other than the October 28, 2021 payment made to the landlord by e-transfer by her mother.

The tenant confirmed that the landlord served the 10-Day Notice in person on November 29, 2021. When asked why she did not file an application for dispute resolution when the landlord issued the 10-Day Notice, the tenant responded that she did not think she needed to. When asked to explain why she did not think she needed to, the tenant did not respond to the question directly but suggested it was because she continued to pay rent and started talking about information she recorded on envelopes. When asked if she paid the rent, she stated that she always paid her rent on time. She stated that she is six (6) months pregnant, sick, dizzy, and living in the suite with her daughter. The multiple filings (the Direct Request and the participatory hearing) by the landlord are causing unnecessary stress and if evicted, she will be pregnant and homeless.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In reviewing whether the landlord's issuance of the 10-Day Notice is warranted and justified under law, I examined what the rent amount due was at the time of its issuance and considered the testimony of both the landlord and the tenant.

Review of the tenancy agreement identifies the tenant and her boyfriend as co-tenants. The tenant testified that now just she and her daughter reside in the rental suite. In September, the tenant paid her boyfriend's flight home resulting in a shortfall in September rent. When considering the testimony before me on this matter, I note that

the tenant gave conflicting evidence testifying, on the one hand, her rent was “always” paid on time, in full, up to date yet in September, she testified it was late.

On October 29, the tenant’s mother paid the rent by e-transfer. The tenant states the payment made by her mother was for rent owing November 1, 2021. The tenant then testified that in November she tried to “negotiate” rent with the landlord, that welfare tried to pay the landlord \$1250.00 in rent which the landlord refused, and that her welfare payments were “on hold”. The landlord did not provide comment on the allegation. The tenant also testified that the landlord insisted on cash and would not provide a rent receipt to avoid a paper trail.

I have considered that most of the rent transactions between tenant and landlord were cash making it difficult to prove who paid what to whom when. I do note that while the landlord accepted cash from the tenant, he also accepted the e-transfer from the tenant’s mother on October 28, 2021, suggesting that if the tenant paid cash, he accepted cash and if the rent came by e-transfer he accepted e-transfer. The landlord testified that he neither had records of payments nor receipts.

When a 10-Day Notice to End Tenancy is issued under s. 46 of the *Act* is received by the tenant, the tenants must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. In this case, the tenant neither filed an application nor paid the overdue rent according to the landlord. If neither the rent was paid or a dispute filed, s. 46(5) comes into effect and the tenant is conclusively presumed to have accepted the end of tenancy and must vacate the rental unit on the effective date. In this case, the tenant testified that she “did not think [she] had to file for dispute resolution” because she continued cash rent payments contradicting the landlord’s testimony.

The landlord has 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 has provided no documentary evidence that proves on a balance of probabilities that the rent paid by the tenant’s mother on October 29, 2021 was for October rather than November rent. The e-transfer provided in oral testimony by the tenant and landlord was not submitted into evidence. The landlord states the payment was for partial payment of September rent and full payment of October rent. The tenant states it was for the remainder of October rent and November rent. Based on the evidence, I am unable to conclude for what rental period the October 2021 payment was made as other than this one e-transfer all of the rent transactions between the

parties were cash transactions, with no rental receipts issued, leaving no paper trail confirming rent payments.

In the absence of evidence to the contrary, I accept the tenant's testimony that she did not think she needed to apply for dispute resolution when she received the Notice because her rent payments were up to date.

I find some further compelling evidence to support the landlord's position is required in these circumstances given the conflicting testimony about whether rent has or has not been paid. In the absence of further compelling evidence, I am not satisfied that the landlord has proven the grounds for the Notice. The Notice is cancelled. The tenant is not conclusively presumed to have accepted the end of the tenancy. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

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

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 28, 2022

Residential Tenancy Branch