



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Van Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, MNDCT, PSF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Tenant applied on November 15, 2021 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 10, 2021 (the 10 Day Notice);
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- compensation for monetary loss or other money owed; and
- an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

The hearing was attended by the Landlord, their assistant (NB), the Tenant, their cousin and advocate (CW), and a support person. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

CW testified she served the Tenant's Notice of Dispute Resolution Proceeding (NDRP) on the Landlord in person on November 28, 2021; the Landlord confirmed he received it. I find the Tenant served the Landlord in accordance with section 89 of the Act.

CW submitted documentary evidence to the Residential Tenancy Branch (RTB), but the Landlord testified he was served no evidence by, or on behalf of, the Tenant. Therefore, I informed those present I would not be considering any of the Tenant's evidence in my decision, in accordance with RTB Rule of Procedure 3.1.

CW testified she had served evidence on the Landlord's assistant, NB, in August 2021.

As the NDRP was made available to the Tenant on November 23, 2021, I do not consider any documents provided to the Landlord prior to that date evidence served for this proceeding.

The Landlord testified he served his responsive evidence on the Tenant in person on February 25, 2022; CW confirmed the evidence was received and submitted that she had sufficient opportunity to review it before the hearing. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Preliminary Matter

Rule of Procedure 2.3 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.

As they are not related to the central issue of whether the tenancy will continue, I dismiss the entirety of the Tenant's claims, except for the dispute of the 10 Day Notice. These matters are dismissed with leave to reapply.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began August 1, 2011; rent is \$1,446.00, due on the first of the month; and the Tenant paid a security deposit of \$294.50. The Tenant testified she paid a pet deposit of \$150.00; the Landlord testified that the Tenant paid a pet deposit of \$146.25. The Landlord confirmed they still hold the Tenant's security deposit and pet deposit.

A copy of the 10 Day Notice is submitted as evidence. The Landlord testified the Notice was served on the Tenant in person on November 10, 2021, which the Tenant confirmed.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay rent in the amount of \$1,468.00, due November 1, 2021.

Assistant NB submitted that the amount on the 10 Day Notice, \$1,468.00, is higher than the rent for November 2021, because it includes an NSF charge.

The Landlord testified that the Tenant did not pay rent for November 2021, and owes rent as follows:

Month	Rent Charged	Rent Paid	Monthly Outstanding
November 2021	\$1,446.00	\$0.00	\$1,446.00
December 2021	\$1,446.00	\$1,446.00	\$0.00
January 2021	\$1,446.00	\$0.00	\$1,446.00
February 2021	\$1,446.00	\$1,446.00	\$0.00
Total Rent Owing			\$2,892.00

The Landlord submitted a copy of the tenant ledger as evidence, which supports his testimony.

The Tenant confirmed she did not pay rent for November 2021 or for January 2022.

CW submitted that the Tenant, her cousin, is blind and is paralyzed on one side. CW testified that she moved in with the Tenant to provide her additional care to supplement the homecare that the Tenant receives, as “[the homecare workers] rush in and out.”

CW testified that once she and the Tenant realized they could not afford the increase in rent due to CW moving in, CW moved out on August 1, 2021. CW testified that after the Landlord received her written notice that she was moving out, which she gave to assistant NB in August 2021, the Tenant’s rent returned to \$485.00.

The Landlord testified he did not receive any documentation in which CW indicated she was moving out of the Tenant’s unit.

CW testified that she removed her belongings from the Tenant's unit and moved in with her daughter, but continued providing care to the Tenant.

The Tenant testified that CW had been living with her "prior to August."

The tenant ledger reflects the following changes in the Tenant's rent:

Month	Rent Charged
May 2021	\$484.00
June 2021	\$1,446.00
July 2021	\$1,446.00
August 2021	\$1,446.00
September 2021	\$484.00
October 2021	\$484.00
November 2021 to February 2022	\$1,446.00

CW testified that in November 2021, the Landlord put the rent back up to \$1,446.00 without notice.

The Landlord testified that the changes in the Tenant's rent were because they "believed that [CW] was telling the truth" that she had moved from the Tenant's rental unit, "but noticed that she had not moved out." The Landlord testified that CW did not move out, and that assistant NB asked CW to provide a copy of her new tenancy agreement, to prove she was living elsewhere, but CW did not provide one.

Assistant NB testified that the second time she requested a copy of CW's new tenancy agreement, CW said she was not able to provide one as she had moved in with her daughter, who was living with roommates. CW confirmed during the hearing that this was the reason she was not able to provide a copy of a tenancy agreement.

I asked the Landlord if he could provide proof to support the claim that CW did not move out. In response, assistant NB testified that usually if [an additional person] moves out of a rental unit, there is a form filled out, and that CW knew that if there were any changes in occupancy, she and the Tenant needed to fill out the required form with the changes.

Analysis

Based on the testimony of those present, I find that the Landlord served the 10 Day Notice on the Tenant in person on November 10, 2021 by posting it to the door, as confirmed by the Tenant. I find the Landlord served the Tenant in accordance with section 88 of the Act.

As the 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find that the Notice meets the form and content requirements of section 52.

Section 46 states that within five days after receiving a notice for non-payment of rent, the tenant may pay the overdue rent, or dispute the notice. The Tenant testified she received the 10 Day Notice on November 10, 2021, and applied to dispute the Notice on November 15, 2021. I find the Tenant applied to dispute the 10 Day Notice within the deadline set by the Act.

Rule of Procedure 6.6 states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The Landlord increased the Tenant's rent by \$962.00 in June 2021, decreased it, then increased it again by the same amount in November 2021. Regarding the amount of a rent increase, section 43 of the Act includes:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.

...

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Regarding the notice of a rent increase, section 42(2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Under section 2 of the Residential Tenancy Regulation (the Regulation), public housing bodies are exempt from the requirements of sections 42 and 43 of the Act.

CW testified that the Landlord increased the Tenant's rent without notice.

The Landlord testified that the changes in the Tenant's rent were due to changes in the occupancy of the Tenant's rental unit. The Landlord did not present evidence that would allow me to determine that, under section 2 of the Regulation, the rental unit is exempt from the requirements of sections 42 and 43 of the Act.

As the Landlord presented insufficient evidence to explain why the Tenant's rent was increased from \$484.00 to \$1,446.00 on two occasions, I find the rent increase imposed on the Tenant is not in accordance with the Act.

The rent amounts from June 2021 to February 2022 may be summarized as follows (balance owing for each month = pre-rent increase – rent Tenant paid):

Month	Rent Landlord charged	Pre-increase rent	Rent Tenant paid	Balance owing for each month
June 2021	\$1,446.00	\$484.00	\$1,446.00	-\$962.00
July 2021	\$1,446.00	\$484.00	\$1,446.00	-\$962.00
August 2021	\$1,446.00	\$484.00	\$1,446.00	-\$962.00
September 2021	\$484.00	\$484.00	\$484.00	\$0.00
October 2021	\$484.00	\$484.00	\$484.00	\$0.00
November 2021	\$1,446.00	\$484.00	\$0.00	-\$484.00
December 2021	\$1,446.00	\$484.00	\$1,446.00	-\$962.00

January 2022	\$1,446.00	\$484.00	\$0.00	-\$484.00
February 2022	\$1,446.00	\$484.00	\$1,446.00	-\$962.00
Totals	\$10,122.00	\$4,356.00	\$8,198.00	-\$3,842.00

As I find the Landlord may have overcharged the Tenant rent in the amount of \$3,842.00, as noted in the above table, the 10 Day Notice is cancelled.

Section 43(5) states that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Therefore, I find that the Tenant is entitled to withhold rent in the amount of \$3,842.00, in accordance with section 43(5) of the Act, and is entitled to an order cancelling the 10 Day Notice.

Conclusion

The Tenant's application is granted.

The 10 Day Notice is cancelled; the tenancy will continue until it is 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: March 21, 2022

Residential Tenancy Branch