Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNR, LAT, OLC, MNDCT, ERP**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued on January 1, 2022, to have the landlord make emergency repairs and repairs to the unit, to be authorized to be allowed to change the locks to the rental unit and for monetary compensation for loss or other money owed.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording this hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice. The balance of the tenant's application is dismissed, with leave to reapply.

Preliminary and Procedural Issues

At the outset of the hearing legal counsel for the landlord stated that the tenant did not name the landlord correctly as they are a limited company as show in the notice to end tenancy. Counsel stated that the ownership has changed since the original tenancy agreement was signed. The tenant does not deny the company is the owner of the premises.

In this case, I do not find it prejudicial to the tenant to amend their application to reflect the proper landlord. Therefore, I have removed the named parties and have added the company name of the landlord.

At the outset of the hearing legal counsel for the landlord stated that they received no evidence from the tenant. The tenant stated that they provided their evidence to the landlord with their application that was sent by email on February 6, 2022, and by registered mail which contained a USB device. The tenant confirmed they did not contact the landlord to determine if it was viewable.

I note the email the tenant has submitted as evidence of service of their application dated February 6, 2022, only has eight attachments, three are related to the hearing package. However, the tenant has filed over 306 pieces of digital evidence, which have been filed on various dates after the hearing package was provided to the tenant.

In this case, I cannot determine whether or not the landlord's received a USB containing evidence from the tenant; However, I am satisfied that the tenant did not comply with the Residential Tenancy Branch Rules of Procedures, as they were required to contact the landlord to ensure the digital evidence was viewable, this would further determine if it was received. Therefore, I have excluded the tenant's evidence from the hearing. In any event most of the evidence of the tenant was related to the other issues in the tenant's application that I am not considering at this hearing and the tenant was granted leave to reapply.

Legal counsel for the landlord stated the tenant was served with the landlord's evidence, in person, as they had hired the documents to be delivered by a courier and they were also sent by email. The tenant stated that does not comply with the service provisions as they were not served by registered mail. The tenant then stated they did not get them.

In this case, I will allow the landlord's evidence to be submitted. The evidence does not have to be served by registered mail, only in a manner permitted by section 88 of the Act. Further, I find it more likely than not that the tenant did receive the documents as they first argued that it was not sent by registered mail. Also, I find it not prejudicial to the tenant as these are emails that the tenant sent to the landlord.

I also note for the record that the tenant was continually interrupting counsel for the landlord. I had to caution the tenant on several occasion and told them that they can

write down their thoughts on a piece of paper so they could be addressed when it was their turn to talk. The tenant continued to interrupt, and I had no choice to place their telephone line on mute, when the phone line is muted the party had the ability to fully listen to the hearing. The tenant was later unmuted and was able to respond to the landlord's submission.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began July 2017. Rent in the amount of $666.25 was payable on the first of each month. A security deposit of $325.00 was paid by the tenant.

The parties have had two previous hearing. The first hearing was held on June 7, 2021, and a Decision made on June 9, 2021. The second hearing held was on September 27, 2021, before the same Arbitrator and a Decision was made on September 29, 2021. The conclusion in this Decision made on September 29, 2021, reads as follows.

> "Conclusion
>
> 1. The 4 Month Notice dated June 16, 2021, is cancelled and the tenancy shall continue.
> 2. The tenant is awarded a Monetary Order of $800.00.
> **3. The tenant may withhold all rent due to the landlord from October 1, 2021, until compliance with the Decision of June 9, 2021, is determined by the RTB or by written agreement by the parties.**
> 4. The tenant's application for repairs under sections 31, 32, 62, 65, 67, and 70 is dismissed with leave to reapply"
>
> **[My Emphasis added]**

The tenant testified that they are not required to pay any rent to the landlord as the landlord has not signed a formal agreement by putting a pen to paper, to cancel the rent reduction. The tenant stated that the landlord has not complied with the Decision of June 9, 2021, as they have not completed an inspection report.

Legal counsel for the landlord stated that the tenant was not allowing access to the rental unit because the tenant believed when the landlord gave written notice to attend the premises that it had to be exactly 24 hours and not over 24 hours.

Legal counsel for the landlord stated that the tenant does not take off any documents posted to their door or even reads them.

Legal counsel for the landlord stated that the tenant has confirmed in writing on several occasions that no inspection is required or needed, and the matter is resolved.

The email of November 29, 2021, 2021, from the tenant to the landlord reads as follows:

> "If you put a letter on my door saying that both parties agree **the lock and window are fine & no inspection report was done or needed**, you paid the 800$ cheque & I received it. **I** will sign and **agree to that**".
>
> **[My Emphasis added]**

The email of January 6, 2022, from the tenant to the landlord reads as follows:

> "Or better yet just! give something to sign and agree that you paid me 800$ and the window and locks are fine. **No inspect report was done or is needed because you can see the window is fine from the outside, The lock never had a problem**, .."
>
> **[My Emphasis added]**

A second email of January 6, 2022, from the tenant to the landlord reads as follows:

> "I have provided proof that we agreed to serving things by email in a decision made by the tenancy branch and by emails between us. … I agreed to leave the door open so you could do the inspection report because you said you all of a sudden have no keys to my place when I tried **saying everything is resolved** & all we need is to sign and agree".
>
> **[My Emphasis added]**

The email of January 28, 2022, from the tenant to the landlord reads in part as follows:

> ".I don't know why you said you don't have keys and need to come by to do the inspection report still, when **I said I think everything is resolved,** all that's left is to give me , something to sign saying the terms of the inspection report are met".

[Reproduced as written]

Counsel for the landlord stated that the issues were resolved, and the tenant did not want the inspection. Counsel for the landlord stated that the landlord had the right to rely upon the action of the tenant when the tenant agreed on November 29, 2021,that everything was fine and not inspection was required, and the tenant was obligation to pay the rent.

The tenant responded that they misunderstood the 24 hours notice requirements. The tenant stated that typing an email is not in writing because they used a keyboard to put the words together and not a pen. The tenant did not deny that the issues had been resolved; however, that an inspection report was never done, and they should not have to pay any rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant was allowed to withhold all rent due to the landlord from October 1, 2021, until compliance with the Decision of June 9, 2021, is determined by the RTB or by written agreement by the parties.

In this case, the tenant has sent multiple emails to the landlord the first one is dated November 29, 2021, that the matter is resolved, and an that inspection report is not needed. The tenant has further instructed the landlord that service must be done by email.

I find it unreasonable that the tenant is now demanding that the inspection report be done, when clearly they have been saying it is unnecessary and that everything is fine and been resolved.

I do not agree with the tenant on the interpretation of the word “written” it does not mean pen to paper, as clearly you can read the tenant’s email and typing is a written form. Further, the Arbitrator did not say it had to be signed, just agreed to in writing, which clearly the tenant had agreed that an inspection was not required as the issues were resolved. I find the landlord had the right to rely upon the actions of the tenant.

I am satisfied by the email of November 29, 2021, and subsequent emails from the tenant that the issues were resolved, and no inspection report was needed. I find the tenant was obligation by their written notice to the landlord to commence payment of rent on December 1, 2021.

The tenant did not pay rent commencing December 1, 2021,or any subsequent rent to the landlord. I find the Notice is valid and remains in full force and effect.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

While I did hear evidence that I have not recorded related to a payment of rent in September 2021, however, the Decision dated September 29, 2021, say the rent reduction starts in October 2021. Therefore, I did not consider any evidence before the Decision was made. Only after that date.

I find that the landlord is entitled to a monetary order pursuant to section 55 1.1 of the Act for unpaid rent. The tenant has not paid rent for December 2021, January, February and March 2022. I find the landlord is entitled to a monetary order for the unpaid rent in the amount of **$2,665.00**.

I order that the landlord retain the security deposit of $325.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **$2,340.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession and a monetary for the unpaid rent as shown above.

The balance of the tenant's application is dismissed with 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: March 11, 2022

Residential Tenancy Branch