



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

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

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:48 pm in order to enable the tenants to call into the hearing scheduled to start at 1:30 pm. Two representatives of the landlord ("**SP**" and "**CL**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that SP, CL, and I were the only ones who had called into the hearing.

SP testified that the landlord received the notice of dispute resolution proceeding package from the tenants. She testified that the landlord provided copies of its documentary evidence to the tenants. I find that both parties have been served with the required documents.

Preliminary Issue – Tenant JJ

The tenancy agreement submitted into evidence by the landlord listed JJ as "adult person other than tenant(s) to occupy the rental unit". SP testified that JJ was not a party to the tenancy agreement; he was an authorized occupant only. As such, I find that JJ is not properly named as an applicant on this application. I order the application be amended to remove him as a party.

Hereinafter I will refer to tenant GP as "the tenant".

Preliminary Issue – Tenant's non-attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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.

As such, despite the fact that this is the tenants application, the landlord bears the evidentiary burden to prove that the notice is valid.

I note that SP testified that the tenant vacated the rental unit on March 31, 2022. Despite this, the application must proceed, as section 55(1.1) of the Act requires an arbitrator to issue a monetary order in the amount of the arrears set out on a 10 day notice to end tenancy. As such, despite the tenancy having ended, I must assess the validity of the Notice.

Issues to be Decided

Are the tenants entitled to:

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

If not, is the landlord entitled to a monetary order for the arrears specified on the Notice?

Background and Evidence

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

The tenant, the landlord and a third individual ("RD") entered into a fixed term tenancy agreement starting November 1, 2020 and ending March 31, 2022. Monthly rent was \$1,700 and was payable on the first of each month. Additionally, SP testified that the tenant agreed to pay parking of \$10 per month, although this agreement is not recorded on the tenancy agreement itself. The tenant paid the landlord a security deposit of \$850, which the landlord continues to hold in trust for the tenant. As stated above, the tenant vacated the rental unit on March 31, 2022. He did not provide a forwarding address when he left.

On May 1, 2021, the tenant and the landlord entered into a “re-development addendum”. SP and CL confirmed that as of that date, RD had vacated the rental unit, and the parties intended that the tenant would be the sole tenant of the rental unit. Additionally, attached to this addendum was a mutual agreement to end tenancy effective March 31, 2022 signed by the tenant and a representative of the landlord.

SP testified that the tenant did not pay monthly rent or his parking fee on January 1, 2022. SP testified that she attached a copy of the Notice to the door of the rental unit on January 5, 2022. the landlord submitted a proof of service form confirming this. The notice specified that the tenant was \$1,710 in arrears As of January 1, 2022. It specified an effective date of January 5, 2022.

She testified that as of the date of the hearing this amount remained unpaid.

On the application, the tenant wrote “landlord gave a notice of redevelopment slash notice tan tenancy and I am therefore entitled to a free months rent.” CL stated that she believes the tenant mistook the 10 day notice for nonpayment of rent with a four month notice to end tenancy issued pursuant to section 49(6) of the Act. She testified that the landlord did not issue such a notice on the tenant and as such the tenant is not entitled to compensation under section 51 of the Act.

Analysis

I find that the Notice was served on the tenant on January 5, 2022. Based on the undisputed testimony of SP, I find that the tenant did not pay monthly rent or his fee for parking for January 2022. As such I find that as of the date the notice was issued the tenant was \$1,710 in rental arrears.

Section 26 of the Act states:

Rules about payment and non-payment of rent

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.

The tenant did not comply with this section of the Act. I note that section 51(1.1) permits a tenant who received a notice pursuant to section 49 to withhold an amount equal to one month’s rent from the *last* months rent. However, as the tenant was not served with a notice pursuant to section 49 and as January 2022 was not his last month, I find that this section does not apply to the tenant. Accordingly, he was not authorized to deduct any portion of the January 2022 rent.

I accept SP's testimony that the tenant has not paid any amount towards the January 2022 arrears and remains in arrears of \$1,710.

As such I find the Notice was issued for a valid reason.

I have reviewed the Notice and find that it complies with the section 52 form and content requirements.

Accordingly, I declined to cancel the Notice. The tenant's application is dismissed without leave to reapply.

Section 55 of the Act states, in part:

Order of possession for the landlord

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.

As the tenant has already vacated the rental unit, there is no need for me to issue an order of possession. However, as I have cancelled the Notice and as it complies with section 52 of the Act, I must make a monetary order in favor of the landlord.

I order that the tenant pay the landlord \$1,710 representing rental arrears specified on the Notice.

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

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

Pursuant to sections 55, 62 and 72 of the Act, I order that the tenant pay the landlord \$860, representing the January 2022 rental arrears (\$1,710) less the security deposit (\$850)

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: April 8, 2022

Residential Tenancy Branch