Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, LRE, FFT

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenants and landlord L.H. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Both parties confirmed their email addresses for service of this decision and order.

The tenants testified that they served the landlords with their application for dispute resolution and evidence via registered mail on January 28, 2022. Landlord L.H. testified that the above documents were received on or around January 31, 2022. I find that the landlords were served in accordance with sections 88 and 89 of the *Act.*

Landlord L.H. testified that the tenants were served with the landlord's evidence on January 4, 2022. The tenants filed this application for dispute resolution on January 15, 2022. The tenants testified that they received the landlord's evidence via email on April 5, 2021. Tenant A.P. testified that he was not concerned with the timing of service. I find that the tenants were sufficiently served, for the purposes of this *Act,* pursuant to section 71 of the *Act* because they confirmed receipt

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Cause (the "Notice") and the continuation of this tenancy is not sufficiently related to the tenants' claim to restrict the landlord's right of entry to warrant that they be heard together. I exercise my discretion to dismiss the tenants' claim to restrict the landlord's right of entry, with leave to reapply.

Issues to be Decided

1. Are the tenants entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2018 and is currently ongoing. Monthly rent in the amount of $1,926.00 is payable on the first day of each month. A security deposit of $1,125.00 was paid by the tenants to the landlords. No written email service agreement between the parties was entered into evidence.

Landlord L.H. testified that the tenants were each emailed a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on January 4, 2022. The Notice was entered into evidence, is dated January 4, 2022 and bears an effective date of January 17, 2022. The Notice states that the tenants failed to pay rent in the amount of $28.00 that was due on January 1, 2022. No proof of service documents, such as the serving email, were entered into evidence. Tenant P.K. testified that she was not served with a copy of the Notice. Tenant A.P. testified that he received the Notice on January 4, 2022. Tenant A.P. testified that he and tenant P.K. were not on speaking terms at that time and he alone handled the Notice.

Landlord L.H. testified that he emailed tenant A.P. a Notice of Rent Increase on September 25, 2021 effective January 1, 2022. The Notice of Rent Increase increased the rent by $28.00. The tenants testified that they received the Notice of Rent Increase around that time. The landlord entered into evidence an email chain between landlord L.H. and tenant A.P. which shows the Notice of Rent Increase was emailed by the landlord on September 25, 2021. The tenant testified that he sent the landlord a confirmation email when he received the Notice of Rent Increase. The landlord entered into evidence an email from tenant A.P. on October 1, 2022, in which tenant A.P. confirmed receipt of the Notice of Rent Increase.

Landlord L.H. testified that in October of 2021 he asked the tenants for 12 post dated rent cheques, but the tenants only provided three after considerable back and forth between the parties. Landlord L.H. testified that the November and December 2021 cheques were in the correct amount, but the January 2022 rent cheque did not reflect the rent increase and was $28.00 short.

Landlord L.H. testified that upon receiving the three cheques in October 2021 he informed tenant A.P. via email that their January 2022 cheque was short $28.00 but the tenants did not respond or provide an updated cheque. The landlords uploaded email correspondence regarding the collection of the rent cheques; however, no email notifying the tenants of the shortfall was entered into evidence. The tenants testified that the landlord did not notify them of their error.

The tenants testified that they did not realize they were $28.00 short until landlord L.H. emailed tenant L.H. with the Notice. Tenant A.P. tenant testified that tenant P.K. was not served with a copy of the Notice. Tenant A.P. testified that he was overseas taking care of his ailing father when he received the Notice and was unable to file to dispute it within five days of receiving it because he was ill with COVID 19 and was self isolating. The tenants entered into evidence a positive COVID 19 test for tenant A.P. for a swab taken overseas on January 5, 2022.

The tenant testified that he made every attempt to pay the landlord the outstanding $28.00 via e-mail transfer while he was sick and out of the country, but the landlord refused to accept the outstanding $28.00. The tenants testified that the landlord refused to accept the outstanding money because of another Residential Tenancy Branch dispute regarding repairs to the subject rental property. The file number for the other dispute is located on the cover page of this decision.

The tenants entered into evidence an email dated January 5, 2022 from tenant A.P. to landlord L.H. requesting to pay the outstanding $28.00 via email transfer. The tenants entered into evidence an email dated January 6, 2022 again requesting an email address to send the outstanding $28.00 to, or alternatively, to deduct the $28.00 from rent relief the landlords and the tenants were discussing due to a water issue in October of 2021.

The tenants entered into evidence an email from landlord L.H. dated January 5, 2022 which states that he will not accept an e-transfer and that the tenant A.P. will have to ask the other landlord, landlord P.W.Y. if she will accept one. Tenant A.P. responded on January 6, 2022 requesting landlord A.P.’s email address and again asked to deduct the $28.00 from the rent relief being discussed. Both parties agreed that landlord P.W.Y. does not speak English and that landlord L.H. has been their point of contact. On January 6, 2022 landlord L.H. gave the tenants landlord P.W.Y.’s phone number.

The tenants entered into evidence a text message to landlord P.W.Y dated January 7, 2022 requesting landlord P.W.Y. to specify how they can pay the outstanding $28.00. The tenants testified that landlord P.W.Y. did not answer the text.

The tenants entered into evidence an email to landlord L.H. from tenant A.P. dated January 10, 2022 which states that landlord P.W.Y. has not gotten back to them about how to pay the outstanding $28.00 and requests L.H. to follow up with landlord P.W.Y.

Landlord L.H. testified that he did not want to accept an email transfer personally because it could affect his taxes. Landlord L.H. testified that the amount of money agreed to be owed to the tenants for the water issue in October 2021 was not finalized until January 16, 2022. Landlord L.H. testified that the finalized amount was $153.00.

Tenant A.P. testified that the amount owed by the landlords was finalized on January 4, 2022. The tenants entered evidence an email exchange between tenant A.P. and landlord L.H. dated January 4, 2021 in which tenant A.P. requests an update on the rent relief and landlord L.H. states: “It will be $153 by month-end.” Landlord L.H. testified that the amount was still not agreed on, on January 4, 2021.

Tenant A.P. testified that he sent the landlord a cheque for $28.00 via mail shortly after returning to Canada, on January 16, 2022. Landlord L.H. testified that the cheque was received around January 22-23, 2022. Landlord L.H. testified that he is seeking an Order of Possession.

Analysis

Based on A.P.’s testimony I find that A.P. received the Notice on January 4, 2022. I find that tenant A.P. was sufficiently served for the purposes of this *Act,* pursuant to section 71 with the Notice on January 4, 2022 because receipt was acknowledged on that day. I note that only one tenant is required to be served with the Notice.

Section 66 of the *Act* states:

> **66** (1)The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

(2)Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:

(a)the extension is agreed to by the landlord;

(b)the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

[Emphasis added]

The landlord did not agree to the extension and requested an Order of Possession. Tenant A.P. testified that the $28.00 short fall was an accident. I find that the tenants did not deduct the unpaid about because they believed the deduction was allowed for emergency repairs or under an order of the director. Pursuant to my above findings, I am not permitted to grant the tenants an extension for filing to dispute the Notice.

Section 46(1) of the *Act* states:

> 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.

Landlord L.H. testified that he served the tenant with a Notice of Rent Increase on September 25, 2021 via email. Tenant A.P. testified that he received it. The landlord entered into evidence and email dated October 1, 2021 from tenant A.P., which confirmed tenant A.P.'s receipt.

Section 42(2) of the *Act* states:

> A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Based on the testimony of the landlord and the September 25, 2021 email entered into evidence, I find that tenant A.P. was emailed the Notice of Rent Increase on September 25, 2021. I find that as no written agreement pertaining to service via email was entered into evidence, the landlord is not entitled to rely on the deeming provisions of section 90 of the *Act.* Based on tenant A.P.'s email dated October 1, 2021, I find that the tenant received the Notice of Rent Increase on October 1, 2021. Pursuant to section 42(2) of

the *Act,* the landlord must give a notice of rent increase at least 3 months before the effective date of the increase. The month the document is served in, is not a clear or full month: therefore, in calculating when the Notice of Rent Increase is to take effect, the month of October does not count as a full month. The earliest effective date for the Notice of Rent Increase, received by the tenant on October 1, 2021 was February 1, 2022.

I find that rent due on January 1, 2022 was $1,898.00 and that this rent was paid on time because the tenants provided the landlords with the January 1, 2022 rent cheque is advance of January 1, 2022.

Sections 46(4) and 46(5) of the *Act* state:

> (4) Within 5 days after receiving a notice under this section, the tenant may
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> (a)pay the overdue rent, in which case the notice has no effect, or
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> (b)dispute the notice by making an application for dispute resolution.
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> (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
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> (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
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> (b)must vacate the rental unit to which the notice relates by that date.

Pursuant to section 46(4) of the *Act,* I find that since no rent was overdue, the Notice has no effect as the tenants were not required to pay what was not owed. I find that since the tenants' January 2022 rent was paid in full the conclusive presumption found in section 46(5) of the *Act* does not apply.

Pursuant to my above findings, I cancel the Notice.

I also note that the landlord is not permitted to avoid the collection of rent. Based on the email correspondence dated January 4-10, 2022 between landlord L.H. and tenant A.P., I find that the landlords intentionally avoided receipt of the alleged $28.00 shortfall in an attempt to end the tenancy. I find that the refusal of the landlords to accept rent cannot be the grounds to end a tenancy under section 46 of the *Act* as one of the duties of a landlord is to accept payment of rent. For this reason, in addition to my findings above, I find that the Notice is invalid and cancelled.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlords.

Conclusion

The Notice is cancelled and is of no force or effect.

The tenants are entitled to deduct $100.00 from rent due to the landlords.

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 13, 2022

Residential Tenancy Branch