



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, DRI, RR, RP, OLC, FFT**

Introduction

This hearing by telephone conference was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated January 2, 2022 ("10 Day Notice") pursuant to section 46;
- a Monetary Order for compensation from the Landlord pursuant to section 67;
- an order regarding a disputed rent increase pursuant to section 43;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided the Landlord pursuant to section 65;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to comply with the Act, the *Residential Tenancy Regulation* (the "Regulation") and/or tenancy agreement pursuant to section 62; and
- authorization for the Tenant to recover the filing fee of the Application from the Landlord.

The Landlord and Tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified he served the Notice of Dispute Resolution Proceeding and his evidence ("NDRP Package") on the Landlord in-person in January 2022 but he could not recall the exact date of service. The Landlord acknowledged receiving the NDRP Package from the Tenant in-person. I find the NDRP Package was served on the Landlord in accordance with sections 88 and 89 of the Act.

The Landlord stated he served his evidence on the Tenant in-person and, although he could not recall the exact date of service, he stated he served his evidence on the Tenant at least 7 clear days before this hearing. The Tenant acknowledged he was served with the Landlord's evidence in-person. I find the Landlord's evidence was served on the Tenant in accordance with section 88 of the Act.

Preliminary Matter – Correction of Rental Address

At the commencement of the hearing, I noticed the rental address provided in the Application indicated two unit numbers at the same civic address. The Tenant stated that, not only did he rent a residential unit from the Landlord, but he also rented a shop from the Landlord located on the ground floor of the same building ("Building") as the rental unit. I told the parties the Act does not regulate properties that are exclusively used for commercial purposes. The Tenant requested that I amend the Application to remove the unit number for the commercial premises on the ground floor of the Building.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlord agreed the second unit listed as part of the rental address is a commercial property he rented to the Tenant and, confirmed that it is not part of the residential tenancy agreement for the rental unit. As such, I amended the Application to remove the reference to the unit number of the commercial premises located on the ground floor of the Building.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

The Application included other claims ("Other Claims") for (i) a Monetary Order for compensation from the Landlord; (ii) an order regarding a disputed rent increase; (iii) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided the Landlord; (iv) an order requiring the Landlord to complete repairs to

the rental unit and; (v) an order for the Landlord to comply with the Act, the *Residential Tenancy Regulation* (the “Regulation”) and/or tenancy agreement.

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* 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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch (“RTB”) are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issues in the Application were whether the tenancy would continue or end based on the 10 Day Notice to end tenancy and whether the Tenant was entitled to recover the filing fee of the Application from the Landlord. Accordingly, I find the Other Claims are not sufficiently related to the primary issues of whether the 10 Day Notice to end tenancy are upheld or set aside and whether the Tenant was entitled to recover his filing fee. Based on the above, if I cancel the 10 Day Notice, then I will dismiss the Other Claims with leave to reapply. If I do not cancel the 10 Day Notice, then I will dismiss the Other Claims, except for the claim for a Monetary Order for compensation, without leave to reapply.

Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 10 Day Notice?
- recover the filing fee for his application from the Landlord?
- If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and a Monetary Order for the Unpaid Rent pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or

arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on September 1, 2016 on a month-to-month basis, with rent of \$1,300.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$650.00 by August 24th, 2021 and a pet damage deposit of \$650.00 by September 1, 2016. The Landlord stated he received the security and pet damage deposits and confirmed he was holding the deposits in trust for the Tenant. The parties agreed the current rent of the rental unit was \$1,348.00 per month.

The Landlord testified the 10 Day Notice was served on the Tenant in-person on January 2, 2022. The Tenant acknowledged service in-person on January 2, 2022. The 10 Day Notice was served on the Tenant in accordance with section 88 of the Act. The 10 Day Notice stated the Tenant owed \$1,348.00 for rental arrears as of January 1, 2022.

The Landlord stated the addendum ("Addendum") to the tenancy agreement added the following three terms:

1. Lawn mowing and basic yard work is the responsibility of the tenant. Lawn mower and weed eater have been provided. If Lawn/yard is not maintained, rent will be increased by \$100.00 immediately.
2. Tenancy agreement is for tenants listed on page 1. Any additional tenants must be approved by Landlord and if approved, monthly rent will be increased by \$300.00 effective on additional tenants move-in day.
3. Tenant is permitted to have cat that he presently owns. No other animals are permitted. When current cat is no longer with Tenant, there will be NO PETS permitted in premises.

The Landlord stated the Tenant failed to perform the lawn and yard work and, as a result, he increased the rent by \$100.00 per month pursuant to paragraph 1 of the Addendum, to \$1,448.00 per month. The Landlord claimed the Tenant had rental arrears of \$298.00 for November 2021 through January 2022 calculated as follows:

Date	Owed	Paid	Balance
01-Nov-21	\$1,448.00	\$1,448.00	\$0.00
01-Dec-21	\$1,448.00	\$1,450.00	-\$2.00
01-Jan-21	\$1,448.00	\$1,150.00	\$298.00
Total	\$4,344.00	\$275.00	\$298.00

The Landlord also stated the Tenant moved his girlfriend into the rental unit. The Landlord stated he sent a letter dated January 3, 2022 ("Letter") to the Tenant advising the rent would increase, pursuant to paragraph 3 of the Addendum, by \$300.0 per month commencing on February 1, 2022.

The Tenant admitted he has not performed the yard work as required by the tenancy agreement but stated the work was not required at the time. The Tenant stated the Landlord met his girlfriend and it was the Tenant's understanding that he did not have to pay the Landlord an additional charge of \$300.00 per month. The Tenant stated that, when the Landlord told him that he was being charged an additional \$100.00 per month for rent in October 2021 for failing to perform the yard work, he paid the Landlord \$1,448.00 for rent for November 2021 and \$1,450.00 for rent for December 2021. The Tenant stated that, after paying the additional rent for November and December 2021, he decided he was not going to pay the additional \$100.00. The Tenant stated he paid \$1,150.00 to the Landlord on January 1, 2022 which represented the original rent of \$1,348.00 less the \$202.00 he had already overpaid the Landlord for the rent in November and December 2021.

Analysis

The Tenant stated he overpaid the rent for November and December 2021. Subsection 26(1) of the Act states:

- 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 Landlord stated the Tenant had rental arrears of \$298.00. Sections 46 and 53 of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The Landlord testified the 10 Day Notice was served on the Tenant in person on January 2, 2022. Pursuant to section 46(4), the Tenant had until January 7, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenant made his application on January 8, 2022. Accordingly, the Tenant did not make his application within the 5-day dispute period required by section 46(4) of the Act. The Tenant did not seek an extension of time to make the Application and he did not testify or present any evidence to support an extension based on extenuating circumstances pursuant to section 66.1. However, the form of Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities was on a two-page Form RTB-30 dated April 2016 that has since been replaced with a three-page Form RTB-30 that contains more information to a landlord and tenant.

Residential Tenancy Policy Guideline 18 ("PG18") address when an arbitrator may issue an order based upon a previous form and when an arbitrator may not accept an older version and require a landlord to serve a notice in the current form. PG 18 states, in part:

Using a form that is not approved by the Director may be valid if it contains the required information and is not intended to mislead. If an application is made on an old form, an arbitrator may amend the form or accept the application as validly filed. *The arbitrator may refuse to amend the current form if a respondent proves prejudice that is attributable to the use of the old form.* An arbitrator may not amend a form which does not contain the required information.

- (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.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (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.
- (4) [Repealed 2006-35-66.]
- (5) 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.

The parties agreed the rent for November and December 2021 and January 2022 was \$1,348.00. I find paragraph 1 of the Addendum relating to the \$100.00 increase in rent to be unenforceable because it specifically contradicts the rent in the tenancy agreement. The only exception to the definition of a rent increase in section 40 of the Act is where the increase in rent is for one or more additional occupants and the increase is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv) of the Act. However, the Tenant submitted a letter from the Landlord dated January 3, 2022 in which the Landlord stated he would be charging the Tenant an additional \$300.00 per month on the basis the Tenant had an additional occupant in the rental unit. Paragraph 2 of the Addendum states that the rent will increase by \$300 monthly for additional occupants. I find that this rent increase is excepted from the definition of a rent increase. As such, the rent increased by \$300.00 per month to \$1,648.00 per month commencing February 1, 2022.

Notwithstanding I have cancelled the 10 Day Notice on the basis the Form RTB-30 does not comply with section 52 of the Act, I will nevertheless consider whether the Landlord had cause to serve the 10 Day Notice. The Tenant submitted another document from the Landlord dated January 3, 2022 in which the Landlord acknowledged receipt of \$1,448.00 for November 2021 rent, \$1,450.00 for December 2021 rent and \$1,150.00 for January 2021 rent. The 10 Day Notice stated the Tenant owed \$1,448.00 for unpaid rent. However, based on the above, I

calculate the Tenant overpaid the rent for November, December 2021 and January 2022 by \$4.00 calculated as follows:

Date	Owed	Paid	Balance
01-Nov-21	\$1,348.00	\$1,448.00	-\$100.00
01-Dec-21	\$1,348.00	\$1,450.00	\$202.00
09-Jan-22	\$1,348.00	\$1,150.00	-\$4.00
Totals	\$4,044.00	\$4,048.00	-\$4.00

I find that, at the time the 10 Day Notice was served, the Tenant had a credit of \$4.00 for rent. As there were not rental arrears as of the date of the 10 Day Notice, I find the Landlord did not have cause to serve the 10 Day Notice.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act and, pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

I dismiss the Other Claims set out in the Application with leave to reapply.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee.

The Other Claims set out in the Application are 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: May 1, 2022

Residential Tenancy Branch