



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, MNDCT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for May 12, 2022.

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:43 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant 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 Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the attending parties from recording the dispute resolution hearing. The tenant confirmed that they understood.

Although no one attended on behalf of the landlord at the reconvened hearing, I note that the landlord's agent, AN, attended the original scheduled hearing on May 12, 2022 in response to the tenant's application, and the landlord's agent was formally adjourned to today's date. I note that Notices of Hearing were sent to both parties to the email

addresses confirmed at the last hearing. Based on the evidence and testimony before me, I find that the landlord was duly served with the tenant's application and evidence, and was aware of the reconvened hearing date. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the Act, I find the tenant duly served with the landlord's evidence.

The tenant confirmed service of the 10 Day Notice dated February 3, 2022. In accordance with section 88 of the Act, I find that the tenant duly served with the 10 Day Notice.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Is the tenant entitled to an order for the landlord to comply with the Act?

Is the tenant entitled to a monetary order for money owed?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 24, 2020. The tenant testified that monthly rent is currently set at \$570.00 per month, payable on the first of the month. The tenant testified that the landlord had charged both them and their partner a security deposit of \$285.00 each, which is double what is allowed under the legislation. The tenant filed this application for the landlord to return half of the tenant's share of the security deposit in the amount of \$142.50.

The tenant is also disputing the 10 Day Notice for Unpaid Rent dated February 3, 2022. The tenant testified questioned the accuracy of the ledger kept by the landlord as they believe that all rent has been paid in full. The tenant testified that they would experience the same issue every time the management changed., and is requesting the cancellation of the 10 Day Notice.

Analysis

Section 46(4) of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. In this case, the tenant disputed the 10 Day Notice within the required 5 days stating that the ledger presented by the landlord is inaccurate and that the rent is paid in full.

In light of the evidence and testimony before me, I find that the tenant has challenged the accuracy of the evidentiary materials presented by the landlord. I find that the tenant raised doubt as to the accuracy of the ledger provided, and what the tenant actually owes. As the landlord did not provide further evidence or testimony to support the accuracy of the ledger, I am unable to determine whether the 10 Day Notice is in fact valid. Accordingly, I allow the tenant's application to cancel the 10 Day Notice dated February 3, 2021. The 10 Day Notice dated February 3, 2021 is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenant also requested an order that the landlord comply with the *Act* by reimbursing the tenant for overpayment of the security deposit for this tenancy which should only be \$285.00. The tenant testified that the landlord currently holds a security deposit of \$570.00.

The Residential Tenancy Regulation states the following about security deposits:

Security deposit and pet damage deposit

2 (1)The landlord agrees

(a)that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,

(b)to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and

(c)to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless

(i)the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or

(ii) the landlord makes an application for dispute resolution under the *Residential Tenancy Act* within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

As noted in the above regulation, the landlord may not collect a security deposit that exceeds one half of the monthly rent payable. I have reviewed the evidence before me, and I am unable to determine the total amount collected by the landlord towards the security deposit for this tenancy, which should not exceed \$285.00. As I am unable to determine whether there has been in fact an overpayment, I dismiss the tenant's application for a monetary order with leave to reapply. Liberty to reapply is not an extension of any applicable timelines. If the landlord has collected a security deposit that exceeds one half of the monthly rent, I order that the landlord return any overpayments to the tenant.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice. The 10 Day Notice dated February 3, 2022 is cancelled and is of no force effect. The tenancy will continue until ended in accordance with the *Act*.

I dismiss the tenant's application for a monetary order with leave to reapply. If the landlord has collected a security deposit that exceeds one half of the monthly rent, I order that the landlord return any overpayments to the tenant.

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 31, 2022

Residential Tenancy Branch