



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, LRE, MNRT, CNR-MT, DRI (Tenant)
OPR-DR, MNR-DR, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application January 24, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To suspend or set conditions on the Landlord's right to enter the rental unit
- To be paid back for the cost of emergency repairs made during the tenancy
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated January 19, 2022 (the “10 Day Notice”)
- For more time to dispute the 10 Day Notice
- To dispute a rent increase that is above the amount allowed by law

The Landlord filed their application February 09, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the 10 Day Notice
- To recover unpaid rent
- For reimbursement for the filing fee

The Landlord appeared at the hearing with P.A. to assist (the “Landlords”). I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”).

The Landlords confirmed the correct spelling of the Tenant’s name which is reflected in the style of cause.

The Tenant appeared at the hearing late and appeared with their mother to assist (the “Tenants”).

All parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant I would consider the dispute of the 10 Day Notice and request for more time to dispute the 10 Day Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the 10 Day Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be given more time to dispute the 10 Day Notice?
2. Should the 10 Day Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
4. Is the Landlord entitled to recover unpaid rent?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started April 01, 2021. Rent is \$1,500.00 per month due on the first day of each month.

The 10 Day Notice states the Tenant failed to pay \$1,500.00 in rent due November 01, 2021. The 10 Day Notice is addressed to the Tenant and refers to the rental unit. The 10 Day Notice is signed and dated by an agent for the Landlord. The 10 Day Notice has an effective date of January 29, 2022.

The Landlords testified that the 10 Day Notice was put in the Tenant's mailbox and emailed to the Tenant January 19, 2022. The Tenants did not know when the Tenant received the 10 Day Notice.

The Landlords testified that the Tenant failed to pay November rent. The Landlords testified that the next rent payment made by the Tenant after the 10 Day Notice was issued was \$900.00 on February 02, 2022. The Landlords testified that there is currently \$5,300.00 in rent outstanding.

The Tenants agreed the Tenant did not pay November rent by November 01, 2021. The Tenants agreed the next rent payment made by the Tenant after the 10 Day Notice was issued was in February 2022. The Tenants could not provide an outline of rent payments made but testified that \$1,500.00 was paid March 02, 2022.

I asked the Tenants the basis for the dispute of the 10 Day Notice. At first, the Tenants testified that the Landlord told the Tenant they could have the last month of rent free. However, I reviewed the six reasons under the *Act* that the Tenant could withhold rent and the Tenants testified that none of the six reasons applied. The Tenants submitted that there is no tenancy agreement covered by the *Act* between the parties, that this is a student house, the situation is complicated and the parties have a business relationship. The Tenants testified that the Tenant does not currently owe any rent.

In reply, the Landlords testified that there is no business relationship between the parties and the parties have a tenancy agreement covered by the *Act*. The Landlord sought an Order of Possession effective two days after service on the Tenant.

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

I accept that the parties entered into a tenancy agreement covered by the *Act* because there is a written tenancy agreement before me, the Landlords confirmed the parties entered into a tenancy agreement covered by the *Act* and there is insufficient evidence before me showing the tenancy agreement is not covered by the *Act*.

Section 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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 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...

(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...

Section 55(1) of the *Act* states:

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...and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

Based on the written tenancy agreement and testimony of the parties, I find the Tenant was required to pay \$1,500.00 in rent by the first day of each month.

Based on the testimony of the parties, I find the Tenant failed to pay rent for November by November 01, 2021.

Although the Tenants testified at first that the Landlord told the Tenant they could have a month of rent free, I reviewed the six reasons the Tenant could have withheld rent with the Tenants and the Tenants were clear that none of the six reasons applied. Therefore, I find the Tenant did not have authority under the *Act* to withhold rent and was required to pay \$1,500.00 in rent by November 01, 2021, pursuant to section 26(1) of the *Act*. Further, I find section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay November rent as required, the Landlord was entitled to issue the 10 Day Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of the Landlords, email in evidence and photo in evidence, I accept that the 10 Day Notice was put in the Tenant's mailbox and emailed to the Tenant January 19, 2022. I find the 10 Day Notice was served in accordance with section 88(f) of the *Act*. Pursuant to section 90(d) of the *Act*, the Tenant is deemed to have received the 10 Day Notice January 22, 2022.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the 10 Day Notice on January 22, 2022, to pay the outstanding rent or dispute the 10 Day Notice pursuant to section 46(4) of the *Act*.

Based on the testimony of the parties, I find the Tenant did not pay the outstanding rent by January 27, 2022.

The Tenant did dispute the 10 Day Notice in time. I find the request for more time to dispute the 10 Day Notice unnecessary and dismiss this request without leave to re-apply.

Although the Tenant disputed the 10 Day Notice in time, the Tenant has not provided a valid basis for disputing the 10 Day Notice and therefore the dispute is dismissed without leave to re-apply.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* and is issued an Order effective two days after service on the Tenant.

The Landlord seeks \$5,300.00 in outstanding rent. I find the Landlord has the onus to prove how much rent is currently outstanding pursuant to rule 6.6 of the Rules because the Landlord applied to recover unpaid rent. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the Tenant did pay rent after the 10 Day Notice was issued because the parties agreed on this. The Tenants denied that the Tenant currently owes any rent. Given the conflicting testimony of the parties, I have considered the documentary evidence before me showing what rent amount is currently outstanding. I find the Landlord has failed to provide compelling evidence of what rent amount is currently outstanding and therefore the Landlord has not proven they are entitled to recover unpaid rent in the amount of \$5,300.00. The Landlord's request to recover unpaid rent is dismissed without leave to re-apply.

Given the Landlord was successful in obtaining an Order of Possession based on the 10 Day Notice, I award the Landlord the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord is issued a Monetary Order for \$100.00.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 02, 2022

Residential Tenancy Branch