



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR

LL: OPR-DR, MNR-DR, MNDCL, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant made one application (“Tenant’s Application”) for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 4, 2022 (the “10 Day Notice”) pursuant to section 46 of the Act.

The Landlords made one application (“Landlords’ Application”) for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent in the amount of \$500.00 pursuant to sections 55 and 67;
- a Monetary Order for compensation for monetary loss or other money owed by the Tenant pursuant to section 67; and
- authorization to recover the filing fee of the Landlords’ Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 11:00 am, although I left the teleconference hearing connection open for the entire hearing, which ended at 11:34 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord (“CS”) and agents (“MH” and “PS”) for the owner of the rental unit (“TSB”) attended the hearing and were 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. I also confirmed from the teleconference system that CS, MH and PS and I were the only ones who had called into this teleconference.

MH stated CS received the Notice of Dispute Resolution Proceeding for the Tenant's Application ("Tenant's NDRP") by facsimile on April 5, 2022. Service of the Tenant's NDRP by facsimile is not a method of service authorized by section 89 of the Act. However, as MH admitted CS received the Tenant's NDRP, I find that, pursuant to section 71(2)(b) of the Act, CS was sufficiently served with the Tenant's NDRP.

MH stated CS served the Notice of Dispute Resolution Proceeding for the Landlord's Application and the Landlord's evidence ("Landlord's NDRP Package") on the Tenant in-person on March 4, 2022. I find the Landlord's NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Addition of Respondent to Tenant's and Landlord's Applications

PS stated the Landlord named in the Tenant's and Landlord's Application was the President TSB which is the owner of the rental unit. PS requested that I amend the Tenant's Application to add TSB as a respondent and amend the Landlord's Application to add TSB as an applicant. CS consented to the addition of TSB as another applicant to the Landlord's Application.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("Rules") 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 Tenant could reasonably have anticipated the Landlord would request an amendment to add TSB as a respondent to the Tenant's Application. As such, I order the Tenant's Application be amended to add TSB as a respondent.

With the consent of the Landlord CS, I order the Landlord's Application be amended to add TSB as an applicant. Hereinafter, I will refer to the TSB and CS as the Landlords and the Landlord's Application as the Landlords' Application.

Preliminary Matter – Correction of Rental Address in Tenant's Application

At the outset of the hearing, I noted the 10 Day Notice stated the unit number as part of the address of the rental unit whereas the Tenant's Application did not specify the unit number as part of the rental address of the rental unit. MH requested that I amend the Tenant's Application to include the unit number as part of the address of the rental unit. Pursuant to Rule 4.2, I order the Tenant's Application be amended to add the unit number as part of the rental address.

Preliminary Issue – Amendment of Landlord's Monetary Claim

At the hearing MH stated that additional rental arrears of \$2,000.00 have accrued since the date of the 10 Day Notice. MH requested that I amend the Landlord's Application to increase the claim for rental arrears to \$2,500.00.

In this case, the Landlord is seeking compensation for unpaid rent that has increase by \$2,000.00 since the 10 Day Notice was served on the Tenant. I find the increase in the Landlord's monetary claim should have been reasonably anticipated by the Tenant. As such, pursuant to Rule 4.2 I order that the Landlords' Application be amended to increase the claim for rental arrears to \$2,500.00.

Preliminary Matter – Severance and Dismissal of Landlord's Claim

The Landlords' Application included a claim for compensation for monetary loss or other money owed by the Tenant.

Rule 2.3 of the Rules 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 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 issue in the Landlords' Application was to whether the Landlord was entitled to (i) an Order of Possession; (ii) a monetary order for rental arrears; and (iii) authorization to recover the filing fee of the Landlords' Application from the Tenant. As such, I severed and dismissed, with leave to reapply, the Landlords' claim for compensation for monetary loss or other money owed by the Tenant.

Preliminary Matter – Non-Attendance by Tenant at Hearing

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") 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, even though the Tenant filed the Tenant's Application, the Landlord bears the burden of proof it is more likely than not that the 10 Day Notice is valid. The Landlord must meet this burden even if the Tenant does not attend the hearing.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenant was not present at the hearing, pursuant to Rule 7.4, I will not consider any evidence submitted by the Tenant in advance of the hearing, when adjudicating whether the Landlords are entitled to an Order of Possession and Monetary Order pursuant to sections 55 of the Act.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for \$2,500.00 for rental arrears?
- recover the filing fee for the Landlords' Application?
- retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlords and their agents, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the claims made in the Landlords' Application and my findings are set out below.

MH submitted a copy of the tenancy agreement between the parties and stated the tenancy commenced on October 1, 2019, on a month-to-month basis, with rent of \$500.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$250.00 by October 1, 2019. MH stated the Landlords received the deposit from the previous owner of the rental unit and the Landlords are holding the deposit in trust for the Tenant.

MH stated CS served the Tenant with the 10 Day Notice on an adult ("SL"), who apparently resides with the Tenant, on March 4, 2022. MH submitted a copy of a Proof of Service on Form RTB-34, in which SL acknowledged receipt of the 10 Day Notice, to corroborate her testimony. MH testified that SL is one of the four persons residing in the

rental unit with the Tenant. MH testified SL is around 50 years of age. Based on the undisputed evidence of MH, I find the 10 Day Notice was served in accordance with the provisions of section 88 of the Act.

MH testified the 10 Day Notice stated the Tenant had rental arrears of \$500.00 as of March 1, 2022. MH stated that, as of the date of this hearing, the Tenant has total rental arrears of \$2,500.00 calculated as follows:

| Date | Owed | Paid | Balance |
|--------------|-------------------|---------------|-------------------|
| 01-Mar-21 | \$500.00 | \$0.00 | \$500.00 |
| 01-Apr-21 | \$500.00 | \$0.00 | \$1,000.00 |
| 01-May-21 | \$500.00 | \$0.00 | \$1,500.00 |
| 01-Jun-21 | \$500.00 | \$0.00 | \$2,000.00 |
| 01-Jul-21 | \$500.00 | \$0.00 | \$2,500.00 |
| Total | \$2,500.00 | \$0.00 | \$2,500.00 |

Analysis

Section 26 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.

I find the monthly rent is \$500.00 and is due on the first day of each month. I accept the MH's undisputed testimony that the Tenant had rental arrears of \$500.00 as of March 1, 2022.

I find that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52 of the Act.

Subsections 55(1) and 55(1.1) of the Act state:

- 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 I have dismissed the Tenant's Application, section 55(1) of the Act requires that I grant the Landlord an Order of Possession of the rental unit. Accordingly, pursuant to section 55(1) of the Act, I order that the Tenant provide the Landlords with vacant possession of the rental unit. Pursuant to section 68(2)(a) of the Act, I order the tenancy ended on July 4, 2021.

I accept MH's undisputed testimony the Tenant did not pay any rent for the months of March to July 2, 2022 inclusive. As such, I find the Tenant has total rental arrears of \$2,500.00 for the months of March through Jul 2022 inclusive, as calculated above. The Tenant must compensate the Landlords this amount. As I have dismissed the Tenant's Application, section 55(1.1) of the Act requires that I must grant an order requiring payment of the unpaid rent. Accordingly, pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlords \$2,500.00 for unpaid rent.

As the Landlords have been successful in the claims made in the Landlords' Application, I award the Landlords the filing fee for the Landlords' Application and order the Tenant to pay 100.00 pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, the Landlords may retain the security deposit in partial satisfaction of the Monetary Orders made above.

Conclusion

Pursuant to subsection 55(1.1) and section 72 of the Act, I order that the Tenant pay the Landlords \$2,350.00, representing the following:

| Description | Amount |
|--------------------------------------|-------------------|
| Rental Arrears | \$2,500.000 |
| Filing Fee of Landlords' Application | \$100.00 |
| Security Deposit Credit | -\$250.00 |
| Total | \$2,350.00 |

Pursuant to section 55 of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and attached orders by 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: July 5, 2022

Residential Tenancy Branch