



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, LRE, FFT, CNC (Tenant)
OPR (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 April 19, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated April 14, 2022 (the “Notice”)
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- To suspend or set conditions on the Landlord's right to enter the rental unit
- To dispute a One Month Notice to End Tenancy for Cause dated May 27, 2022 (the “One Month Notice”)
- For reimbursement for the filing fee

The Landlord filed their application May 04, 2022 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the Notice

The Tenant appeared at the hearing. M.K. and M.M. (the “Agents”) appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and One Month Notice as well as the request for reimbursement for the filing fee but dismiss the remaining requests because they are not sufficiently related to the dispute of the Notice and One Month 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”).

The Agents advised that the Landlord is seeking a Monetary Order for unpaid rent. Given the Landlord did not apply for this on the Landlord’s Application, I will consider it on the Tenant’s Application as required by the *Act*.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Agents confirmed receipt of the hearing package for the Tenant’s Application. The Agents testified that the Landlord did not receive evidence from the Tenant. The Tenant testified that they served their evidence on the Landlord by registered mail and provided Tracking Numbers 985 and 842. The Tenant provided the address used for the Landlord and the Agents confirmed the address is correct. I looked Tracking Numbers 985 and 842 up on the Canada Post website which shows the package with Tracking Number 985 was sent March 18, 2022, and delivered April 02, 2022. The website shows the package with Tracking Number 842 was sent March 28, 2022, and delivered March 30, 2022.

Based on the testimony of the Tenant, Tracking Numbers and Canada Post website information, I am satisfied the Landlord was served with the Tenant’s evidence in accordance with section 88(c) of the *Act*. I am satisfied the evidence was received by the Landlord April 02, 2022, and March 30, 2022, pursuant to the Canada Post website information. I find the Tenant complied with the Rules in relation to the timing of service. The Tenant’s evidence is admitted.

The Tenant testified that they did not receive the hearing package or evidence for the Landlord’s Application.

M.M. testified that the hearing package for the Landlord’s Application was posted to the door of the rental unit May 13, 2022. M.M. testified that the Landlord’s evidence was given to an adult who lives at the rental unit August 10 and 11, 2022. The Landlord

submitted Proof of Service forms signed by witnesses confirming service of the evidence packages.

Based on the testimony of M.M. and Proof of Service documents, I am satisfied the Tenant was served with the Landlord's evidence in accordance with section 88(e) of the *Act*. I also find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service. The Landlord's evidence is admitted.

I am not satisfied the hearing package for the Landlord's Application was served on the Tenant because the Proof of Service documents do not relate to the hearing package and there is no further evidence of service before me. Therefore, the Landlord's Application is dismissed with leave to re-apply. However, I have considered the validity of the Notice on the Tenant's Application which makes the Landlord's Application moot.

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

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the One Month Notice be cancelled?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows. They had a written tenancy agreement with the prior owner of the rental unit which started July 23, 2019, and was for a fixed term of one year. Rent is \$2,500.00 due on the first day of each month. They paid a security deposit of \$1,250.00.

The Tenant submitted page six of a written tenancy agreement between themselves and the prior owner.

The Agents testified that the Landlord purchased the rental unit in October of 2021 and the Tenant was living there at the time. The Agents did not know anything further about a tenancy agreement in this matter.

Notice

The Notice states that the Tenant failed to pay \$12,500.00 in rent due April 01, 2022.

The Agents testified that the Notice was served on the Tenant in person and by email on April 14, 2022. The Tenant testified that they received the Notice on their door and did not know what date this was.

The Agents testified that the Tenant failed to pay rent from November 01, 2021, to April 01, 2022. The Agents testified that the Tenant has not paid any rent since being issued the Notice. The Agents confirmed the Landlord has never received rent from the Tenant. The Agents testified that there was no notice given to the Tenant about how to pay rent when the Landlord purchased the rental unit. The Agents testified that the Landlord attended the rental unit to collect rent from the Tenant; however, the Tenant did not pay rent. The Agents testified that \$25,000.00 in rent is currently outstanding.

The Tenant submitted photos of a sign in the front yard of the rental unit stating it is being sold as a development site. I asked the Agents about this photo. The Agents testified that the sign has been up since before the Landlord purchased the rental unit.

The Landlord submitted a statement of account dated May 17, 2022, showing rent was not paid from November 01, 2021, to May 01, 2022. The Landlord submitted a Monetary Order Worksheet showing rent outstanding from October 01, 2021, to August 01, 2022. The Landlord submitted a statement of account dated August 11, 2022, showing rent outstanding up until August 01, 2022. The Landlord submitted a statement of account dated August 04, 2022, showing rent outstanding from November 01, 2021, to August 01, 2022.

The Tenant testified that they have been paying rent in cash and that the Landlord will not issue receipts. The Tenant testified that they have been paying multiple unknown people who attend the rental unit and ask for rent. The Tenant testified that they have paid all rent, except for August. The Tenant testified that the rental unit is being sold as a development site and they should be issued a Four Month Notice. The Tenant

testified that the sign in the front yard of the rental unit shown in their photos has been up for months and is still up.

The Tenant submitted a signed statement from M.N. stating they have witnessed the Tenant pay rent in cash since September 2021.

The Tenant submitted messages from M.K. dated December 17, 2020, stating, “Okay we will just bored the place over weekend so take ur shit and get out” and “That guy is my business partner so leave our house. We are gonna bored the whole house on the weekend period.”

The Tenant submitted a message from them to M.K. dated December 17, 2020, stating, “I’ve offered to pay once I know who to pay it to and that it’s the rightful owner of the house.”

One Month Notice

The One Month Notice was issued for repeated late payment of rent. The Agents testified that the One Month Notice was posted to the door of the rental unit May 27, 2022. The Tenant did not know when they received the One Month Notice. The Agents testified that rent was not paid from October of 2021 to May of 2022 and therefore the One Month Notice was issued for repeated late payment of rent. The Tenant testified that rent was always paid on time, other than for August. The Tenant questioned why the Landlord would wait this long to issue notices to end tenancy if they were not paying rent.

The Tenant disputed the One Month Notice June 06, 2022.

Analysis

Notice

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...

Sections 55(1) and (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...and

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

I accept the Tenant's testimony about the details of the tenancy agreement between them and the prior owner of the rental unit based on the testimony and page six of the written tenancy agreement. I also find the Agents did not know the details of the tenancy agreement and therefore I rely on the Tenant's testimony about this. I find the Tenant owes \$2,500.00 in rent by the first day of each month pursuant to the tenancy agreement.

The parties disagreed about whether the Tenant owed rent April 14, 2022, when the Notice was issued. The Landlord has the onus to prove the grounds for the Notice

pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am not satisfied based on the evidence provided that the Tenant has failed to pay rent, other than for August, which the Tenant acknowledged they have not paid.

The Agents testified that the Landlord attended the rental unit to collect rent and the Tenant did not pay rent. It would have been simple for the Landlord to collect evidence of attending the rental unit to collect rent, and the Tenant not paying rent, through video evidence or having someone attend with the Landlord as a witness. However, the Landlord did not submit any evidence to support the testimony of the Agents that the Landlord attended the rental unit to collect rent.

The Tenant submitted compelling evidence that the rental unit is for sale as a development site. The Agents testified that the sign in the front yard of the rental unit showing it is for sale as a development site has been up since before the Landlord purchased the rental unit. I find it unlikely that a for sale sign for a development site, with phone numbers for realtors displayed, would be left up for 10 months after the rental unit was for sale and sold to the Landlord because this does not accord with common sense. The documentary evidence of the Tenant causes me to question the reliability and credibility of the Agent's testimony on this point which in turn causes me to question their reliability and credibility in general.

In addition to submitting compelling evidence that the Landlord is selling the rental unit as a development site, the Tenant also submitted evidence showing the Landlord is motivated to end this tenancy so much so that M.K. is threatening the Tenant with an unlawful eviction as shown in the two messages from December 17, 2020.

I agree with the Tenant that it seems unlikely that the Landlord would purchase the rental unit, never receive rent from the Tenant and yet wait six months, until the rent amount owing is \$15,000.00, to issue a 10 Day Notice. The Landlord did not submit any documentary evidence showing they issued a 10 Day Notice prior to April of 2022. The Landlord did not submit any documentary evidence showing they communicated with the Tenant about not paying rent over the six months. I do acknowledge that the Landlord likely communicated with the Tenant about rent in December of 2021 given the messages the Tenant submitted. However, there is no continuous communication before me about unpaid rent.

The Notice states that the Tenant failed to pay \$12,500.00 in rent, yet the Agents testified that the Tenant did not pay any rent from November 01, 2021, to April 01, 2022, which would be \$15,000.00. The Notice does not accord with the testimony of the Agents.

Further, the Landlord has submitted three statements of account and one Monetary Order Worksheet, none of which I find compelling. The statements of account are dated May 17, 2022, August 11, 2022, and August 04, 2022, all after the Notice was issued. I find it concerning that the Landlord has not provided a statement of account showing they kept track of rent payments or non-payments every month since October when they purchased the rental unit. I also find it concerning that some of the monetary documents show rent has not been paid since October of 2021, and some show rent has not been paid since November of 2021, yet all were authored well after these months. I do not find the Landlord's financial records reliable or credible given when they were produced and given the differences between them.

I have considered that the Tenant submitted a signed witness statement saying M.N. has witnessed the Tenant paying rent.

I have also considered that the Tenant submitted a message showing they were willing to pay rent in December of 2021.

Given the above, I am not satisfied based on the evidence provided that any rent was outstanding when the Notice was issued. Given this, I cancel the Notice.

One Month Notice

The One Month Notice was issued pursuant to section 47(1)(b) of the *Act* which states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(b) the tenant is repeatedly late paying rent...

For the same reasons as above, I am not satisfied based on the evidence provided that the Tenant paid rent late from October 2021 to May 2022 as alleged on the One Month Notice and therefore I cancel the One Month Notice.

The tenancy will continue until ended in accordance with the *Act*.

Filing Fee

Given the Tenant has been successful in the Tenant's Application, the Tenant is entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Monetary Order

Sections 55(1) and (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...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.

The Landlord sought a Monetary Order for unpaid rent. The Tenant acknowledged August rent has not been paid. I decline to issue the Landlord a Monetary Order for unpaid rent on the Tenant's Application because section 55(1.1) only applies when a tenant's dispute of a notice to end tenancy is dismissed or the 10 Day Notice is upheld. I have allowed the Tenant's dispute of the Notice and have cancelled the Notice. Therefore, the Landlord is not entitled to a Monetary Order pursuant to section 55(1.1) of the *Act*.

Conclusion

The Notice and One Month Notice are cancelled.

The Tenant can deduct \$100.00 from their next rent payment.

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: August 29, 2022

Residential Tenancy Branch