



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR-MT, OLC, FFT

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

FZ represented the landlord In this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord duly served with the Application and evidence.

The tenants dispute being served with the landlord's evidence package, which the landlord testified was served by way of email on July 29, 2022. The tenants testified that they had never consented to email service, and that they had blocked communication

by email from the management company as they felt they were being harassed. The tenants testified that they were not aware of who PZ was. As the landlord's evidence was not served in accordance with section 88 of the Act, the landlord's evidence was excluded for the purpose of the hearing, which the exception of the bank statement which was admitted by consent of the tenants. The landlord confirmed that they still wished to proceed with the hearing as scheduled.

The tenants confirmed receipt of the 10 Day Notice dated April 4, 2022, which was posted on the tenants' door on the same date. In accordance with sections 88 and 90 of the Act, I find the tenants deemed served with the 10 Day Notice on April 7, 2022, 3 days after posting. As the tenants filed their application on April 12, 2022, I find that the tenants had filed their application within the required 5 days, and therefore their application for more time under section 66 of the Act is not required.

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?

Are the tenants entitled to an order for the landlord to comply with the Act?

Are the tenants entitled to recover the filing fee?

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 fixed term tenancy began on October 1, 2020, and continued on a month-to-month basis after September 30, 2021. Monthly rent was set at \$2,400.00, and increased to \$2,437.00 effective June 1, 2022. The landlord still holds a security deposit of \$1,200.00 for this tenancy.

The landlord served the tenants with a 10 Day Notice for unpaid rent on April 4, 2022. On the 10 Day Notice, the landlord notes that the tenants were in arrears of \$5,866.06 which was due on April 4, 2022, and \$767.53 in outstanding utilities as of March 8, 2022.

The tenants dispute the validity of the 10 Day Notice as both parties had entered into a repayment plan after the tenants were served with a 10 Day Notice for unpaid rent on February 15, 2022. The tenants testified that the landlords had agreed to withdraw the 10 Day Notice on the condition that the tenants enter to a re-payment plan where the tenants were to pay the monthly rent as required plus an additional \$500.00 every month on the 16th day of the month which was to be applied to the outstanding rent and utilities. The tenants testified that they had lost their job before Christmas, and the landlords had accommodated them. The tenants testified that they had made a payment of \$1,650.00 on April 4, 2022, and another payment of \$1,250.00 on April 11, 2022 as supported by the landlord's own bank record. The tenants testified that the two payments totalling \$2,900.00 satisfied the required payments for April 2022 per the repayment plan, and was paid within 5 days of the 10 Day Notice being served on them.

The landlord confirmed that the two parties did enter into a repayment plan, but argued that the tenants failed to pay the outstanding utilities. The landlord testified that \$458.27 was due on March 16, 2022, and the remainder was due on April 16, 2022. The amount noted on the 10 Day Notice was \$767.53, which included the March amount. The landlord testified that the outstanding utilities were an additional amount on top of the \$500.00 payable under the repayment plan.

Analysis

The tenants were served the 10 Day Notice on April 4, 2022, and filed their application disputing the Notice on April 12, 2022. As the tenants filed their application pursuant to section 46(4) of the *Act*, within five days as required by the *Act*, I must now consider whether the 10 Day Notice is valid.

Section 26 of the *Act* requires that "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."

Although it is undisputed that both parties had entered into a repayment plan, both parties provided different versions of what the payment plan entailed. The tenants argued that the agreement was for monthly rent to be paid on the first, and an additional \$500.00 was to be paid on the 16th, which was to go towards the outstanding rent and utilities. Both parties confirmed that a total of \$2,900.00 was paid by April 11, 2022 by the tenants. The landlord argued that the tenants also owed utilities, which was an additional amount that remains unpaid by the tenants.

In review of the evidence and testimony before me, I find that the tenants did pay the

outstanding rent within the required time, and in accordance with the repayment plan and Act.

As noted above, the landlord's written evidence was excluded for the purposes of this hearing with the exception of the bank statement. I am not satisfied that the landlord had provided sufficient evidence to support that any additional rent or utilities was payable above the \$2,900.00 paid by the tenants. I find that the tenants complied with the *Act* and repayment plan, which included the monthly rent plus an additional \$500.00 by the 16th day of the month. On this basis, I allow the tenants' application to cancel the 10 Day Notice dated April 4, 2022. This tenancy is to continue until ended in accordance with the *Act*.

The tenants requested an order for the landlord to comply with the *Act*. I have considered this request, and as the specific agreement was not properly submitted in evidence, I decline to make any further orders at this time. The landlord is at liberty to serve the tenants with a new 10 Day Notice or Notice to End Tenancy if they feel they have a valid reason to do so. The tenants have the right to dispute any future Notices if they feel the Notices are invalid.

I allow the tenants to recover the filing fee.

Conclusion

I allow the tenants' application to cancel the landlord's 10 Day Notice. The 10 Day Notice dated April 4, 2022 is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application. I allow the tenants to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount.

The tenants' application for an order for the landlord to comply is 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: August 31, 2022

Residential Tenancy Branch