



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNRL-S FFL

Introduction

The hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 72.

The Landlord's agent ("CC") and one of the two Tenants ("KK") attended the participatory hearing. The other Tenant ("RB") did not attend the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

CC stated the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("collectively the "NDRP Package") was served on RB by registered mail on June 8, 2022. CC provided the Canada Post tracking number for service of the NDRP Package on RB to corroborate his testimony. I find the NDRP Package was served on RB pursuant to the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Addition of Respondent to Application

Although he was not named as a respondent in the Application, KK attended the hearing and stated he was a tenant, with RB, on the tenancy agreement. KK submitted a copy of the tenancy agreement ("Tenancy Agreement"), dated March 15, 2021, to the Residential Tenancy Branch and stated he served a copy of the Tenancy Agreement, with other evidence, on CC's door on in June 2022. The Tenancy Agreement states

both RB and KK are tenants. KK stated he was not aware the Landlord served a Ten Day Notice to End Tenancy for Unpaid Rent for Unpaid Rent and/or Utilities on the Tenants until he received a copy of the NDRP Package that was served by the Landlord on the Tenants' door. KK requested that I amend the Application to add him as a respondent. I noted that, if he became a respondent, then he may become liable for payment of any rental arrears that the Landlord has claimed in the Application. The Tenant stated, notwithstanding the potential risk, he nevertheless wanted to be named as a respondent.

Rules 7.12 and 7.13 of the RoP states:

7.12 Adding Additional Parties

Request that another person be added to a proceeding In exceptional circumstances, a party may make an oral request at the hearing to add another part

7.13 Determining that another person be added as a party

At the request of a party under Rule 7.12, the arbitrator will decide whether a person will be added as a party.

In addition, the arbitrator may unilaterally determine that another person should be added as a party.

The newly added party will be added to the proceedings without the need for further revision of the Application for Dispute Resolution.

All Rules of Procedure apply to the newly added party, with the exception of Rules establishing timeframes for the exchange of evidence.

As soon as possible after a party is added to a proceeding, the original applicant(s) and respondent(s) must serve their evidence on the newly added party.

The newly added party must, as soon as possible, serve their evidence on the original applicant(s) and respondent(s) and submit it to the Residential Tenancy Branch directly or through a Service BC Office, and in any event not less than seven days before the reconvened hearing.

As KK is a tenant named in the Tenancy Agreement, the principles of natural justice dictate that he has the right to attend the hearing, give testimony and make submissions. As such, I unilaterally order the Application to be amended to name KK as a respondent in the Application pursuant to Rule 7.13. As the KK admitted he received a copy of the NDRP Package on the Tenants' door sometime in June 2022, I also order that KK was sufficiently served with the NDRP Package pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Late Service of Tenant's Evidence on Landlord

Pursuant to Rule 7.13, I may adjourn the hearing so that KK, who has been added as a respondent at today's hearing, may serve his evidence, and submit it to the RTB, not less than seven days before the reconvened hearing. KK stated he served his evidence on CC's door on September 27, 2022 and also sent it by registered mail on September 27, 2022. As such, I find KK's evidence was served on the Landlord in accordance with the provisions of section 88 of the Act. CC admitted he received KK's evidence on his door on September 28, 2022 and that he has reviewed it. As such, I find the Landlord was served with KK's evidence on September 28, 2022, being at least seven days before the hearing. Based on the foregoing, I find it is unnecessary for me to adjourn this hearing pursuant to Rule 7.13.

Issues to be Decided

Is the Landlord entitled to:

- an order of possession for unpaid rent?
- a monetary order for unpaid rent and/or utilities?
- retain the Tenants' security deposit to apply against unpaid rent and/or utilities
- recover the filing fee for the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenancy Agreement submitted into evidence by KK states the tenancy commenced on March 15, 2021. The Tenancy Agreement states the rent is \$325.00 and that rent

was “reduced for ongoing services rendered”. Although It is unclear from the Tenancy Agreement on the day of the month that rent is payable, KK stated the Tenants were required to pay the rent on the 1st day of each month. The Tenancy Agreement required the Tenants pay \$162.50 for a security deposit. CC stated he became the building manager in 2022 and he could not locate a tenancy agreement for the tenancy. CC stated the tracking number of the tenancy agreement imprinted at the top of page 1 matched the Landlord’s records but the tracking number indicated at the top of Schedule “A” to the Tenancy Agreement did not match the Landlord’s records. CC stated that, as a result of this discrepancy, he was unwilling to acknowledge the Tenancy Agreement as the current agreement for the tenancy. CC stated the rent for the rental unit was \$600.00.

CC stated the Landlord served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated April 30, 2022 (“10 Day Notice”) on the Tenants’ door on April 29, 2022. The 10 Day Notice stated the Tenants had rental arrears of \$3,900.00 as of May 1, 2022. CC submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB-34 to corroborate his testimony that the 10 Day Notice was served on the Tenants’ door on April 29, 2022. CC submitted into evidence a ledger for the tenancy that stated the Tenants had rental arrears of \$4,550.00 as of May 1, 2022, calculated as follows:

Date	Rent Owed	Paid	Balance
July 1, 2021	\$650.00		\$650.00
August 1, 2021	\$650.00		\$1,300.00
August 5, 2021		\$650.00	\$650.00
September 1, 2021	\$650.00		\$1,300.00
October 1, 2021	\$650.00		\$1,950.00
October 6, 2021		\$650.00	\$1,300.00
October 8, 2021		\$650.00	\$650.00
November 1, 2021	\$650.00		\$1,300.00
December 1, 2021	\$650.00		\$1,950.00
January 1, 2022	\$650.00		\$2,600.00
January 10, 2022		\$650.00	\$1,950.00
February 1, 2022	\$650.00		\$2,600.00
March 1, 2022	\$650.00		\$3,250.00
April 1, 2022	\$650.00		\$3,900.00
May 1, 2022	\$650.00		\$4,550.00
Total	\$7,150.00	\$2,600.00	\$4,550.00

KK stated he performed repairs to the residential property from time to time as requested by the former manager of the property. KK admitted he has not performed any repairs to the residential premises since CC replaced the former manager.

Analysis

Sections 26 and 46(1) through 46(5) of the Act state:

- 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.
- 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 *[form and content of notice to end tenancy]*.
 - (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.
 - (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

- (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

CC testified the Landlord served the 10 Day Notice on the Tenants' door on November April 29, 2022 and submitted a signed and witnessed Proof of Service to corroborate his testimony. I find the 10 Day Notice was served on the Tenants in accordance with section 88 of the Act. Pursuant to section 90 of the Act, the Tenants were deemed to have received the First 10 Day Notice on May 2, 2022. Pursuant to section 46(4) of the Act, the Tenants had until May 9, 2022, being the next business day after expiry of the 5-day dispute period, within which to dispute the 10 Day Notice. There is not evidence the Tenants disputed the 10 Day Notice.

CC stated the rent was \$650.00 per month and the ledger the Landlord submitted into evidence indicated the Tenants owed a total of \$4,550.00 for rental arrears as of May 1, 2022. The 10 Day Notice, which was served prior to May 1, 2022, stated the amount of rental arrears was \$3,900.00 as of May 1, 2022. The Tenants submitted into evidence a signed copy of a Tenancy Agreement that states the rent is \$325.00 and that the rent was "reduced for ongoing services rendered". CC stated the Tenancy Agreement submitted by the Tenants had a different tracking number for Schedule "A" than the tracking number indicated in the Landlord's evidence. In the absence of any evidence to corroborate CC's testimony, I find the Landlord has not proven, on a balance of probabilities, that the rent was \$650.00 per month. Based on the Tenancy Agreement submitted by the Tenants, I find the rent was \$325.00 per month. As such, I find the aggregate rent the Tenants were obligated to pay for rent was \$3,575.00 for the months of July 2021 to August 2022 inclusive. The ledger indicates the Tenants paid a total of \$2,600.00 leaving rental arrears of \$975.00.

Section 46(2) of the Act states that a notice under this section must comply with section 52 of the Act. Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Section 52(d) requires the Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities state the grounds for ending the tenancy. This implicitly means a landlord must state the correct amount of rent owing by the tenant on the date stated on the Ten Day Notice. If a landlord states the rental arrears owed by the Tenants is greater than the amount of rental arrears actually owed by the tenant, then the tenant may be dissuaded from disputing the Ten Day Notice. I find that the amount actually owed by the Tenants for rental arrears of \$975.00 is substantially less than the \$3,900.00 in rental arrears the 10 Day Notice stated the Tenants owed. I also find the 10 Day Notice was dated and served on the Tenants' door prior to the date the rental arrears were claimed to be owing as of May 1, 2022. As such, I find the 10 Day Notice does not comply with section 46(1) of the Act and the form and content requirements of section 52 of the Act. Based on the foregoing, I find the 10 Day Notice was not effective to give the Tenants notice to end the tenancy. As such, I dismiss the Application without leave to reapply. The tenancy continues until ended in accordance with the provisions of the Act.

Conclusion

The Application is dismissed without leave to reapply. The tenancy continues until ended in accordance with the provisions of the Act.

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: October 10, 2022

Residential Tenancy Branch