



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL (Landlord)
CNR, LRE (Tenant)

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 June 13, 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 June 07, 2022 (the “June Notice”)
- To suspend or set conditions on the Landlord's right to enter the rental unit

The Landlord filed their application July 12, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated July 02, 2022 (the “July Notice”)
- To recover unpaid rent
- For reimbursement for the filing fee

The Tenant appeared at the hearing with O.F.M. The Landlord appeared at the hearing with N.F.

The Tenant advised that they moved out of the rental unit August 22, 2022. The Landlord agreed the Tenant had moved out. However, the Tenant took the position that they were unlawfully removed from the rental unit and wanted to re-gain possession of

the rental unit. I note that the Tenant has a court ordered “no-go” condition in relation to the rental unit; however, still sought possession of the rental unit. Given the Tenant’s position, I told the Tenant I would consider their dispute of the June Notice.

I dismissed the Tenant’s request to suspend or set conditions on the Landlord’s right to enter the rental unit pursuant to rule 2.3 of the Rules of Procedure (the “Rules”) because this is not sufficiently related to the dispute of the June Notice. The request to suspend or set conditions on the Landlord’s right to enter the rental unit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

I note that the Landlord confirmed there is nobody living in the rental unit presently.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules. The parties provided affirmed testimony.

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

The Landlord confirmed receipt of the hearing package for the Tenant’s Application and therefore I proceeded with the Tenant’s Application because the hearing package includes notice of the hearing and the Application.

The Tenant testified that they did not receive a hearing package or evidence from the Landlord. At first the Landlord testified that the hearing package and their evidence were posted on the door of the rental unit; however, after further discussion, the Landlord acknowledged they did not serve the hearing package on the Tenant. The Landlord was required to serve the hearing package on the Tenant pursuant to section 59(3) of the *Residential Tenancy Act* (the “*Act*”) and rule 3.1 of the Rules. Given the Landlord’s Application was not served on the Tenant, and the Tenant therefore had no notice of the Landlord’s Application, the Landlord’s Application is dismissed with leave to re-apply, except in relation to recovery of the filing fee which is dismissed without leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Given the above, I proceeded to hear the parties on the Tenant’s Application as it relates to the dispute of the June Notice. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the June Notice. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the June Notice be cancelled?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started May 15, 2022, and was for a fixed term ending May 15, 2023. Rent was \$4,500.00 per month due on the first day of each month. The agreement states that the Tenant will pay a \$3,000.00 security deposit. The agreement is signed by both parties.

The Landlord submitted that there was never a tenancy agreement between the parties because the Tenant provided a cheque for their security deposit and the cheque bounced and therefore no money was paid. The Landlord acknowledged they gave the Tenant keys to the rental unit and the Tenant moved into the rental unit. The Landlord said the Tenant lived in the rental unit for “maybe” one month before moving out.

The Tenant agreed the cheque they gave to the Landlord for the security deposit bounced. The Tenant said they moved into the rental unit and lived in it for around four months.

The Tenant submitted the June Notice they received. The June Notice does not have an address under the section stating, “I, the Landlord, give you 10 days’ notice to move out of the rental unit/site located at”.

Analysis

I find there was a tenancy agreement between the parties. I acknowledge that a tenancy agreement is usually formed when there is an agreement made between the parties, verbally or in writing, and the security deposit is paid. I accept that the security deposit here was not actually paid because the cheque provided to the Landlord bounced. However, where the parties have signed a written tenancy agreement, the Landlord has given the Tenant keys to the rental unit, the Tenant has moved into the rental unit and the Tenant has provided a cheque to the Landlord for the security deposit, I find a tenancy agreement has been formed and the parties are required to comply with the *Act*. The remedy for the Landlord if the Tenant did not pay the security

deposit or first months' rent is to issue a One Month Notice pursuant to section 47(1)(a) of the *Act* or 10 Day Notice pursuant to section 46(1) of the *Act*.

The June Notice was issued pursuant to section 46(1) of the *Act*. I find the June Notice does not comply with section 52 of the *Act* as required by section 46(2) of the *Act* because it does not have the rental unit in the section stating, "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at". 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...

(e) when given by a landlord, be in the approved form.

Section 46(2) of the *Act* states:

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Given the above, the Landlord must complete notices to end tenancy correctly. Given the Landlord did not do so here, the June Notice is not valid, and I cancel it.

I told the Tenant during the hearing that I will not issue the Tenant an Order of Possession for the rental unit. This is because the Tenant did not apply for an Order of Possession for the rental unit. Further, the Landlord served the Tenant another 10 Day Notice in July, and it may be that the July Notice ended this tenancy and therefore the Tenant is not entitled to possession of the rental unit. I do not know whether the July Notice ended the tenancy because I did not consider the July Notice for the reasons outlined above. If the Tenant wants an Order of Possession for the rental unit, the Tenant can file an Application for Dispute Resolution seeking one.

The parties agreed at the hearing that the Landlord can serve all RTB related documents and materials on the Tenant by email at the email address on the front page of this decision.

Conclusion

The Tenant's Application to dispute the June Notice is granted and the June Notice is cancelled. The Tenant's Application to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed with leave to re-apply.

The Landlord's Application is dismissed with leave to re-apply, except in relation to recovery of the filing fee which is dismissed without leave to re-apply.

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: November 03, 2022

Residential Tenancy Branch