



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR**

CNR, CNE, MNDCT, RR, RP, LRE, OLC, FFT

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55; and
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order to cancel a notice to end tenancy for end of employment, pursuant to sections 48 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing and the tenant was represented by her agent/mother, CN.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing. Email addresses for me to send the decision was also confirmed.

As both parties were present, service of documents was examined. The landlord did not acknowledge receipt of the tenant's Notice of Dispute Resolution Proceedings package from the tenant, but the landlord acknowledged a copy was sent to her by the Residential Tenancy Branch. The tenant confirmed that no documentary evidence was provided to the Residential Tenancy Branch, so the landlord has everything she and I do. I am satisfied the landlord has been effectively served with the tenant's Notice of Dispute Resolution Proceedings.

The tenant did not acknowledge service of the landlord's Notice of Dispute Resolution Proceedings package. The landlord testified that she posted a copy to the tenant's door on November 27, 2022 and sent a copy via expresspost. I deem the Notice of Dispute Resolution Proceedings effectively served upon the tenant on November 30, 2022, three days after it was posted to door of the tenant's residence in accordance with sections 89 and 90 of the Act.

Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

The landlord's application seeking both an order of possession and a monetary order for unpaid rent were sufficiently related and I determined both would be considered for this hearing.

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of a portion of their disputes.

1. The parties mutually agree that the tenancy will end at 1:00 p.m. on December 31, 2022 by which time the tenant and any other occupant will have vacated the rental unit.
2. The parties will attend the rental unit at 1:00 p.m. on December 31, 2022 to conduct a move-out condition inspection report.
3. The tenant agrees to vacate the rental unit in accordance with a 2 Month Notice to End Tenancy for Landlord's Use that was served upon her. The parties understand that the tenant is entitled to waive paying rent for the month of December pursuant to section 51.
4. The tenant acknowledges \$1,800.00 rent for the month of November was not paid and that the landlord will be awarded a monetary order for that amount.
5. The parties agree that the arbitrator is to make a final, binding and enforceable decision regarding whether October 2022 rent was paid.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to these aspects of the application before me.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for October's rent?

Background and Evidence

The landlord testified that agreement was for the tenant to pay rent via direct deposit. From the commencement of the tenancy, the tenant has either been unable to pay rent, has given excuses and deferred payment. The landlord provided a handwritten spreadsheet and screenshots of text messages sent between the tenant and herself to corroborate her version of events.

According to the spreadsheet, the tenant was late in paying rent throughout June to the end of September, 2022. By September 27th, the tenant made a final direct deposit of \$675.00, finally catching up in arrears to the end of September. The landlord notes that no rent was paid (for either October or November) as of November 23rd.

The tenant's agent/mother testified that her daughter, the tenant, paid rent for the month of October via cash and that the landlord provided a handwritten receipt for it. The receipt was left inside the rental unit, however she (the agent/mother) does not live anywhere near the rental unit and cannot retrieve that document at the moment. The agent also testified that she was last in the rental unit on December 6th and was able to get in, but as of December 8th, she can no longer access it because the landlord has changed the locks.

In rebuttal, the landlord testified that the locks have never been changed. The tenant's keys work fine. The landlord also denies the tenant ever paid rent in cash. The landlord testified she insists on direct deposit to avoid any disagreements as to whether rent was paid.

Analysis

Section 26 states 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

I find that on a balance of probabilities, the landlord's version of events is the most likely to be true. First, I find the landlord's spreadsheet to be consistent in noting when the tenant made each payment by direct deposit. The landlord acknowledged each time the tenant made a payment and included it in her spreadsheet. The landlord could have misrepresented payments in her handwritten document but did not do so.

Moreover, I have read the text messages sent between the parties during the tenancy and they corroborate the landlord's testimony that payments were always made via direct deposit and never by cash. I find the tenant's mother's testimony that the tenant paid October's rent in cash and the receipt was left inside the tenant's inaccessible unit less likely to be plausible or credible. If the tenant's mother had been in the rental unit

on December 6th, as she said she was, I would expect her to have taken a copy of the receipt for October's rent and uploaded it for this hearing. It is unreasonable for me to find in favour of the tenant, given the lack of sufficient evidence to support it. Consequently, I find the tenant did not pay rent for October 2022 in breach of section 26 of the Act and must compensate the landlord for it.

The tenant's agent conceded rent for the month of November was not paid. The \$1,800.00 monetary order awarded to the landlord by agreement is enhanced by an additional \$1,800.00 representing rent for the month of October, 2022.

The landlord's claim is limited to what is stated in the application pursuant to Rule 2.2 and the landlord did not seek to recover the filing fee in her application. The landlord's filing fee will not be recovered.

The tenant's claim was unsuccessful and the tenant's filing fee will not be recovered.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on December 31, 2022, should the landlord be required to do so.

I award the landlord a monetary order in the amount of \$3,600.00.

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: December 22, 2022

Residential Tenancy Branch