



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, LRE, LAT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70; and
- authorization to change the locks, pursuant to section 31;

The tenant and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's support person also attended this hearing and did not provide any testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Severance

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.

It is my determination that the priority claims regarding the Two Month Notice and the 10 Day Notice (the “Notices”) and the continuation of this tenancy are not sufficiently related to any of the tenant’s other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices. I exercise my discretion to dismiss all of the tenant’s claims with leave to reapply except cancellation of the Notices.

Preliminary Issue- Service

The tenant testified that she served the landlord with her application for dispute resolution and copies of the Notices via registered mail within one day of being told to serve the landlord. The agent testified that the landlord received the above documents on July 28, 2022 via registered mail.

The tenant testified that she served the landlord with her evidence in person but could not recall the specific date. The tenant testified that she guessed that she served the landlord with her evidence on November 28th or 26th, 2022.

The agent testified that the landlord personally received the tenant’s evidence on December 2, 2022 and that the tenant emailed additional evidence on December 4, 2022. The agent testified that the landlord did not have an opportunity to reply to the evidence provided by the tenant. No proof of service documents were entered into evidence.

I prefer the agent’s testimony as to when the tenant’s evidence was served as the tenant’s was unsure on the dates of service and the agent had a clear recollection. I find that the tenant served the landlord with evidence on December 2, 2022 and December

4, 2022. December 2, 2022 is five clear days before this hearing. December 4, 2022 is three clear days before this hearing.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the agent testified that the landlord did not have time to reply to the tenant’s late evidence. I find that to accept the tenant’s late evidence would breach the principles of natural justice. I therefore exclude the tenant’s evidence from consideration.

The landlord testified that the tenant was served with the landlord’s evidence on two occasions: in person on October 3, 2022 and November 17, 2022. The tenant testified that she received the October 3, 2022 evidence and landlord served the second package in person on November 18, 2022.

I find that regardless of whether the November service occurred on the 17th or 18th, 2022, the tenant was served with all of the landlord’s evidence in accordance with section 88 of the *Act* and the *Rules*. The landlord’s evidence is accepted for consideration.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notice, pursuant to section 46 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that the parties entered into a verbal tenancy agreement, and that no written tenancy agreement was signed by the parties. The agent testified that she is the landlord's daughter.

10 Day Notice

The tenant testified that this tenancy started in March or April of 2014 and that rent at the start of this tenancy was \$1,000.00 per month. This was not disputed by the agent.

The tenant testified that in 2016 she went bankrupt and had a difficult time paying rent. The tenant testified that the landlord offered to reduce her rent to \$900.00 per month. The tenant testified that she was very thankful for the rent reduction.

The agent testified that she was told that the landlord agreed to temporarily reduce the rent to \$900.00 when COVID started. This was disputed by the tenant. The tenant testified that the landlord never told her that the rent reduction, which was granted in 2016, was temporary. The agent testified that the rent decrease was temporary, but the parties did not discuss when rent would return to the original rental rate of \$1,000.00 per month.

The tenant testified that in April 2022, the landlord verbally told her that rent for May 2022 was increasing by \$200.00 to \$1,100.00 and that if she didn't pay the rent increase, the tenant would be evicted. The agent testified that she thought the above rent increase came into effect June 1, 2022.

The tenant testified that she paid the rent increase for May and June 2022, but then learned that the landlord was not permitted to raise her rent by \$200.00 per month and so she deducted the overpayment for May and June 2022 from July 2022's rent. Both parties agree that the tenant paid \$500.00 for July 2022's rent. The tenant testified that the \$500.00 was paid to the landlord before the 10 Day Notice was served, this was not disputed by the agent.

The agent testified that she did not know what amount of rent the tenant paid for May and June 2022.

The agent testified that the tenant was personally served with the 10 Day Notice on July 9, 2022 because the full rent of \$1,100.00 was not paid by the tenant. The tenant testified that she received the 10 Day Notice around that time but could not recall on what date.

The agent testified that the subject rental property is significantly below market value. The agent testified that the landlord asked for the \$200.00 rent increase to recoup money lost due to the rent decrease.

Two Month Notice

The agent testified that the tenant was personally served with the Two Month Notice on July 9, 2022. The tenant testified that she received the Two Month Notice around that date but could not recall the exact date she received it.

The tenant testified that all four pages of the Two Month Notice were not served upon her and that the landlord left page two blank. The tenant entered into evidence two out of four pages of the Two Month Notice. On page 2, the ground for ending the Two Month's Notice is blank. The copy of the Two Month Notice entered into evidence by the landlord states on page 2:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

The child of the landlord or landlord's spouse

The agent testified that she did not know why the Two Month Notice entered into evidence by the tenant is different that the Two Month Notice entered into evidence by the landlord.

The tenant testified that because all four pages of the Two Month Notice were not served and because the Two Month Notice was not filled out properly, the Two Month Notice is void. The agent did not respond to the tenant's testimony that all pages of the Two Month Notice were not served.

The agent testified that the Two Month Notice was served on the tenant because she plans on moving into the subject rental property while her home is being built.

The tenant testified that the landlord originally told her that if she refused to pay the rent increase he would move his granddaughters into the subject rental property. The tenant testified that the landlord never mentioned to her that one of his kids wanted to move in. The tenant testified that the landlord is evicting her to raise the rent.

Analysis

I accept the agent's testimony that the 10 Day Notice was personally served on the tenant on July 9, 2022, in accordance with section 88 of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. In this case, the landlord bears the burden of proof for both Notices.

I accept the tenant's testimony that she paid \$1,100.00 per month for May and June 2022's rent. I find the tenant's testimony on this point was direct and bore an air of reality. I find the agent lacked knowledge regarding what rent was received during May and June 2022.

Based on the testimony of both parties, I find that rent at the start of this tenancy was \$1,000.00 per month, due on the first day of each month. I find that at some point the

landlord reduced the rent to \$900.00 per month, due on the first day of each month. I find that the tenant has been paying \$900.00 per month for at least two years.

The agent testified that the rent reduction was temporary, and the tenant disputed this. As this was an oral arrangement and the parties have not provided documentary evidence supporting their position, I find that the landlord has not proved, on a balance of probabilities, that the rent reduction was temporary or that an amount other than \$900.00 per month was due. I find that rent of \$900.00 was due per month when the landlord provided the tenant with a verbal rent increase of \$200.00 per month in April of 2022.

Section 42 of the *Act* states:

42 (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the *Act* states:

43 (1)A landlord may impose a rent increase only up to the amount

- (a)calculated in accordance with the regulations,
- (b)ordered by the director on an application under subsection (3), or
- (c)agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3)In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the

amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4)[Repealed 2006-35-66.]

(5)If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Based on the testimony of both parties, I find that the landlord did not serve a Notice of Rent Increase on the tenant in accordance with sections 42 and 43 of the *Act* because the notice of rent increase was not in writing, was not provided three clear months before the effective date of the rent increase and was above the allowable limit, even if rent reverted to \$1,000.00 per month, which I have found the landlord has not proved. I therefore find that the rent increase is of no force or effect and that the rent for the subject rental property is \$900.00 per month.

Pursuant to section 43(5) of the *Act*, I find that the tenant was permitted to deduct the improper rent increase collected by the landlord in May and June 2022 from rent due on July 1, 2022. I find that since the tenant overpaid May and June 2022's rent by \$200.00 per month, the tenant was permitted to deduct \$400.00 from rent due on July 1, 2022. I find that since the tenant was permitted to deduct \$400.00 from the \$900.00 owed for July 2022's rent, the tenant was only required to pay the landlord \$500.00 for July 2022 which both parties agreed the tenant paid.

Section 46(1) of the *Act* states that 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.

I find that since July 2022's rent was paid in full before the 10 Day Notice was served on the tenant, the Notice has no force or effect because no rent was owed to the landlord when the 10 Day Notice was served. The 10 Day Notice is therefore cancelled and of no force or effect.

Two Month Notice

Based on the testimony of the tenant and the two pages of the Two Month Notice entered into evidence by the tenant, I find that the landlord only served the tenant with

two out of four pages of the Two Month Notice and failed to fill in page two of the Two Month Notice which sets out the grounds for serving the Notice. I find, on a balance of probabilities, that page two of the landlord's copy of the Two Month Notice was filled in after the Two Month Notice was served on the tenant.

Section 52 of the *Act* states that 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.

I find that since all four pages of the Two Month Notice were not served on the tenant the Two Month Notice does not comply with section 52(e) of the *Act* because the approved form has four pages, not two. I find that since the Two Month Notice served on the tenant did not state the ground for ending the tenancy, as required by section 52(d) of the *Act*, the Two Month Notice is ineffective. Pursuant to my above findings, the Two Month Notice is cancelled and of no force or effect.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

The Two Month Notice is cancelled and of no force or effect.

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 08, 2022

Residential Tenancy Branch