



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, PSF, OLC, FFT, OPR-DR, MNR-DR

Introduction

This hearing was set to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"); to dispute an unlawful rent increase and order the landlord to comply with the Act with respect to an unlawful rent increases; and, other remedies pertaining to laundry facilities. The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

Both parties appeared and/or were represented at the hearing. The parties were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing I explored service of proceeding packages and evidence upon each other.

The tenants testified that that they served their proceeding package and evidence in two ways: by delivering the documents to a family member at the landlord's house and by sending the documents to the landlord via registered mail. The tenants uploaded a video of SM giving a package to a person she called to "Coco" and asked Coco to give it to the landlord. The landlord's son/agent acknowledged receiving the tenant's proceeding package and exhibits by registered mail. I was satisfied the tenants sufficiently served the landlord and I admitted the tenant's materials into evidence.

The landlord's agent testified that the landlord's proceeding package and evidence was served in person to the tenant KW by the landlord/owner, on July 21, 2022. KW confirmed receiving the 10 Day Notice from the landlord on July 21, 2022 but stated there were no other documents given to her on July 21, 2022. I pointed out to the landlord's agent that the landlord's Application for Dispute Resolution was not filed until August 3, 2022 and that it would be impossible to have served it to the tenants on July

21, 2022. The landlord's agent responded that they had completed the Landlord's Application for Dispute Resolution and Direct Request Worksheet manually and served it to the tenant, on July 21, 2022, before it was filed with the Residential Tenancy Branch. The landlord had signed a Proof of Service document that indicates a 10 Day Notice was served on July 21, 2022 but not other document is indicated on the Proof of Service. The landlord also submitted photographs of giving KW documents on July 21, 2022 and in the photographs a 10 Day Notice can be seen but no other documents. In turning to the manually completed Landlord's Application for Dispute Resolution, I see that the date appearing next to the landlord's signature is August 2, 2022. As such, I find the landlord's agent's testimony that the landlord's Application for Dispute Resolution was served to the tenant on July 21, 2022 to be unsupported and incorrect. Therefore, I am unsatisfied the landlord served the Landlord's Application for Dispute Resolution and associated documents to the tenant and I dismiss the landlord's Application for Dispute Resolution.

Although I have dismissed the landlord's Application for Dispute Resolution, a landlord may be provided an Order of Possession and Monetary Order under a Tenant's Application for Dispute Resolution to dispute a 10 Day Notice, pursuant to section 55(1) and (1.1) of the Act. Therefore, I continued to hear from both parties with a view to determine whether the tenancy shall end due to unpaid rent and if the landlord is entitled to an Order of Possession and Monetary Order.

The landlord had submitted evidence to the Residential Tenancy Branch under the tenant's file number on December 6, 2022. The landlord's agent acknowledged this evidence package was not served to the tenants. Therefore, I did not admit the landlord's evidence package; however, I permitted the landlord to describe the landlord's position and evidence orally during the hearing.

The parties confirmed that they had come to this hearing prepared to deal with the issues of rent payable and the 10 Day Notice. As such, I limited the tenant's Application for Dispute Resolution to these matters and I did not hear the tenant's claim with respect to laundry facilities. I severed the tenant's request for access to laundry facilities pursuant to Rule 2.3 of the Rules of Procedure and dismiss that request with leave to reapply. Should the tenants continue to have an issue with accessing laundry facilities, they may make another Application for Dispute Resolution.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. What is the amount of the monthly rent?
3. Is there outstanding rent payable to the landlord? If so, how much?

Background and Evidence

Much of the evidence presented to me was in dispute. Below, I have summarized the parties respective positions.

Terms of tenancy

The landlord/owner testified that there was no written tenancy agreement between the parties. Rather, he entered into an oral tenancy agreement with two of the named tenants, SL and KW, several years ago. The landlord/owner did not recall what year the tenancy started, what the monthly rent was initially set at, and whether the tenants paid a security deposit. Rather, the only term the landlord knew was that rent is \$1400.00 per month, due on the first.

The landlord's son took over property management of the rental unit in approximately mid 2020 and he understood from his father that rent for the unit was \$1400.00 per month.

The tenants testified that when their tenancy began, all three of the named tenants entered into a written tenancy agreement for the rental unit with an agent for the landlord, referred to by initials DN. The tenancy started on January 15, 2017 and between the three of them, a security deposit of \$525.00 was paid by way of Ministry cheques. The tenants submitted that pro-rated rent of \$525.00 was paid for January 15-31, 2017 by way of two Ministry cheques and cash of \$175.00 each. The monthly rent was set at \$1050.00 due on February 1, 2017 and the first of the month thereafter. The tenants provided a document that includes the payment amount and Ministry cheque numbers.

The tenants submitted copies of pages 3 and 6 of the written tenancy agreement as evidence. On page 3, a security deposit of \$525.00 is indicated. On page 6 of the tenancy agreement, there is a signature in the space for DN to sign and all three

tenants' names are listed below DN's name. The dates appearing on pages 3 and 6 are January 15, 2017.

During the hearing, I instructed the tenants to read from page 2 of the tenancy, in the space that provides for the amount of rent and the date rent is due. The tenants testified that page 2 states the rent is \$1050.00, due on the first day of the month. When the tenant's daughter/sister AM was called as a witness I instructed her to read from page 2 of the tenancy agreement and she read aloud that the tenancy agreement stipulates that rent is \$1050.00 payable on the first of the month.

The tenants and AM testified that the rent was raised to \$1090.00 several years ago, although a Notice of Rent Increase was not given by the landlord. The tenants had not made an issue of this increase since the amount of rent increase was within the allowable amount at the time. However, more recently, the landlord asked for rent of \$1400.00 per month and the tenants were of the view that was an excessive increase and they were not given a Notice of Rent Increase.

The landlord's agent acknowledged that he did not have any copies of a Notice of Rent Increase for the tenants.

The landlord's agent suggested that DN did not have authority to enter into a tenancy agreement that was binding on the landlord and that DN was more of a maintenance person.

Both parties were in agreement that DN has since passed away.

The landlord's son stated he has not seen the tenancy agreement that is in the tenant's possession, other than the two pages the tenant's included in the their evidence, and he raised concerns of its legitimacy.

The tenant's daughter/sister AM was agreeable to making a copy of all of the pages of the tenancy agreement and addendum the tenants have and emailing it to the landlord's son/agent. The landlord's son/agent confirmed that he would accept an emailed copy of the document so that he may review it, in its entirety.

10 Day Notice and rent payments

It was undisputed that on July 21, 2022 the landlord/owner personally served the tenant KW with the subject 10 Day Notice. The 10 Day Notice was issued on July 21, 2022 and indicates that rent of \$1400.00 was outstanding for July 1, 2022. The tenants filed to dispute the 10 Day Notice within the time limit for doing so.

It was also undisputed that one day earlier, on July 20, 2022, the tenants had paid the landlord \$2750.00 via e-transfer and in the e-transfer message it states the payment is for June/July rent.

The landlord's agent testified that the tenants were behind in their rent since they would only make partial payments or lump sum payments. The landlord's agent claimed that the tenants were in arrears by approximately \$5000.00 when he made an agreement with KW at the end of April 2022. According to the landlord's agent, the agreement was that the tenants would move out by the end of June 2022 and pay the landlord \$3000.00 in satisfaction of their arrears. However, the tenants did not move out by June 30, 2022 and only paid \$2750.00 toward the arrears, leaving \$250.00 still outstanding for the period prior to July 2022 and rent of \$1400.00 outstanding for July 2022.

Tenant KW denied entering into any such agreement to move out and pay \$3000.00 in arrears with the landlord's agent. Rather, the tenants testified that the landlord communicated to them that he wanted the tenants to move out so that the landlord could house seasonal farm workers.

The landlord's agent acknowledged that the parties' mutual agreement was verbal and that it was not reduced to writing.

The tenant's daughter/sister AM testified that she had set up e-transfer on her father's bank account a couple of years ago as the tenants had been paying cash and not receiving any receipts. The landlord would tell the tenants how much to pay and the tenants would tell AM how much to send to the landlord. In paying \$2750.00 to the landlord on July 20, 2022 the tenants considered the payment to be for rent including the month of July 2022.

KW testified that she used to bring cash rent payments to the landlord's house and give the money to the family member that answered the door, usually the landlord's wife

“Coco”. No receipts were given for the cash payments. The landlord’s agent acknowledged that no receipts were given to the tenants for cash payments.

The landlord’s agent and AM provided consistent testimony that after the 10 Day Notice was issued, payments of \$1090.00 per month were sent to the landlord regularly via e-transfer. The landlord’s agent and AM provided the following testimony:

- \$1090 was e-transferred on August 22, 2022 for August 2022 rent
- \$1090 was e-transferred on August 26, 2022 for September 2022 rent
- \$1090 was e-transferred on September 29, 2022 and accepted by the landlord on October 12, 2022 for October 2022 rent.
- \$1090 was e-transferred on October 30, 2022 and accepted by the landlord on November 14, 2022 for November 2022 rent.
- \$1090 was e-transferred on November 29, 2022 and accepted on December 12, 2022 for December 2022 rent.

Considering the tenants made a large payment on July 20, 2022 right before the 10 Day Notice was issued, of which the tenants considered the payment to satisfy up to and including July 2022 rent, I asked the landlord if he had prepared a ledger or some other kind of accounting to reflect the monthly rent and all of partial and lump sum payments the tenants had made over time. The landlord’s agent acknowledged that he had not prepared such a ledger or accounting. The landlord’s agent acknowledged the amount of rent payable was a mess but pointed the finger at the tenants for making the inconsistent rent payments.

AM testified that she and her husband had prepared a ledger in an attempt to determine if any rent was owing to the landlord but that she was uncertain of the amount owing since the amount of the monthly rent was in dispute. During the hearing, I informed the parties that I found the month rent to be, based on a balance of probabilities, to be \$1050.00. After communicating that to the parties, AM calculated that the tenants owe \$310.00 in rent to the landlord at this time. AM stated she is willing to give to the landlord’s agent a copy of her ledger so that he may see her calculations and will e-transfer the landlord \$310.00 right away.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason indicated on the notice.

In this case, the landlord issued a 10 Day Notice on July 21, 2022 indicating rent of \$1400.00 was outstanding as of July 1, 2022. The tenants filed to dispute the 10 Day Notice within the time limit for doing so and pointed to their payment of \$2750.00 on July 20, 2022 as being the basis for disputing the 10 Day Notice. The landlord acknowledged receipt of \$2750.00 on July 20, 2022 but was of the position that was for rent arrears incurred prior to July 2022. Accordingly, the landlord has the burden to prove the \$2750.00 payment was for rent arrears pre-dating July 2022.

In my view, to demonstrate the tenants were in rent arrears by at least \$2750.00 prior to July 2022, the amount of the monthly rent must be known and I would expect to see a ledger showing the amount of the monthly rent and rent payments received.

The parties were in dispute about many issues, including the existence of a written tenancy agreement, the payment of a security deposit, and amount of rent payable under the tenancy agreement and whether the monthly rent was increased.

Having heard the landlord never served the tenants with any Notices of Rent Increase, which is required to increase the rent by any amount under Part 3 of the Act, the rent would remain at the amount set out when the tenancy formed. Part 3 of the Act further sets out that if a tenant pays an unlawful rent increase, the tenant may recover the overpaid rent by deducting the overpayments from rent otherwise payable to the landlord.

Considering the landlord/owner could not recall most of the particulars concerning this tenancy, including the date it started, whether the tenants paid a security deposit, and the amount of the rent when the tenancy started, I do not weight to the landlord's testimony that rent payable is \$1400.00.

In contrast, the tenants and their witness were consistent that the rent was initially set at \$1050.00 and this is supported by a written document they were provided by the landlord's employee at the time the tenancy started and consistent with paying a

security deposit of \$525.00 which is supported by page 3 of the tenancy agreement and Ministry cheque numbers.

The tenants acknowledged that the landlord increased the rent, albeit unlawfully, to \$1090.00 some time ago, which they did not balk at, and I find that acknowledgement to be more consistent with the monthly rent be initially set at \$1050.00 and inconsistent with the landlord's submission that rent was set at \$1400.00.

Also of consideration is the parties' credibility. I note that the landlord's agents testimony concerning service of the landlord's proceeding package was incorrect and the tenant's testimony concerning service of the tenant's proceeding package was supported by evidence. Therefore, I find the tenant's testimony to be more reliable than the landlord's.

All things considered, and on a balance of probabilities, I find it more likely than not that the monthly rent was initially set at \$1050.00 payable on the first day of every month. In the absence of any Notice of Rent Increase being served to the tenant, I find the rent has remained at \$1050.00 per month and continues to remain at \$1050.00 until such time the rent is lawfully increased pursuant to Part 3 of the Act.

Having found the monthly rent to be \$1050.00 which is much less than the monthly rent of \$1400.00 that the landlord put forth, disputed oral testimony concerning an agreement between the parties in April 2022, and in the absence of a ledger or receipts being prepared by the landlord, I find the landlord did not satisfy me that the tenants were in rental arrears by at least \$2750.00 prior to July 2022. That being said, I find it reasonable that the payment of \$2750.00 was for rent for July 2022 and arrears, as indicated in the message on the e-transfer. Therefore, I am unsatisfied the 10 Day Notice issued on July 21, 2022 was valid and **I grant the tenants' request for cancellation of the 10 Day Notice with the effect that the tenancy continues at this time.**

Having cancelled the 10 Day Notice, I do not issue an Order of Possession to the landlord. In the absence of a copy of any ledger or accounting demonstrating the amount of rent payable, I am unable to verify its accuracy and I do not provide the landlord a Monetary Order with this decision.

Since the tenants were successful in their Application for Dispute Resolution, I award the tenants recovery of the \$100.00 filing fee they paid, from the landlord. **To recover this award for the filing fee, I authorize the tenants to deduct \$100.00 from rent otherwise payable.**

Having heard a number of violations of the Act with respect to this tenancy, pursuant to section 62 of the Act, **I issue the following orders to both parties with a view to avoiding future disputes and bringing the parties into compliance with the Act:**

1. The tenants shall pay monthly rent of \$1050.00 on or before the first day of the month from this point forward until such time the rent is lawfully increased.
2. If the landlord seeks to increase the rent, this must be accomplished in a manner that complies with the rent increase provisions of Part 3 of the Act, including serving the tenants with a Notice of Rent Increase in the approved form.
3. The tenants, as delegated to AM, shall provide the landlord with a copy of all of the pages of the tenancy agreement and addendum the tenants have in their possession by emailing it to the landlord's son/agent without delay.
4. The tenants, as delegated to AM, shall provide the landlord with a copy of the ledger/calculation AM made in determining the amount of rent payable by emailing it to the landlord's son/agent without delay.
5. The tenants shall immediately pay the amount of outstanding rent, as calculated by AM in the ledger described above.
6. If, upon review of the ledger prepared by AM, the landlord determines the tenants owe a different amount of rent arrears, the landlord shall provide the tenants with a ledger/calculation showing how he arrives at the sum, including: the amount of the monthly rent, less the payments received from the tenant and the dates the payments were received.
7. The landlord shall give a receipt to the tenants for any cash payments received from the tenants from this point forward, regardless of whether a receipt was requested by the tenant.
8. Any notice to end tenancy or mutual agreement to end tenancy must be in writing. If the parties reach a mutual agreement to end the tenancy the agreement must be signed by both parties. Any notice to end tenancy issued by the landlord must be in the approved form and for a reason permitted under the Act.

Conclusion

The 10 Day Notice issued on July 21, 2022 is cancelled and the tenancy continues at this time.

The tenants are awarded recovery of the filing fee and are authorized to deduct \$100.00 from rent otherwise payable to the landlord to recover this award from the landlord.

I have determined the monthly rent is \$1050.00 and this is the amount payable on or before the first day of every month until such time the amount is lawfully increased by way of a Notice of Rent Increase.

I do not provide an Order of Possession or Monetary Order to the landlord with this decision; however, I have issued several other orders to the parties in this decision, under section 62 of the Act, with a view to avoiding future disputes and to bring the parties in compliance with 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: December 21, 2022

Residential Tenancy Branch