



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC, LRE, LAT, OLC
Landlord: OPR-DR, MNR-DR, FFL

Introduction

On September 3, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- b. for restrictions on the Landlord’s right to enter the rental unit;
- c. for authorization to change the locks to the rental unit;
- d. for the Landlord’s compliance with the legislation and/or the tenancy agreement.

The Landlord filed an Application, via direct request and joined to the Tenant’s initial Application, on September 17, 2022, for:

- a. an Order of Possession in line with the 10-Day Notice;
- b. compensation for unpaid rent in line with the 10-Day Notice;
- c. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 23, 2023. Both parties attended the teleconference hearing. At the outset of the hearing, both parties confirmed they received the Notice of Dispute Resolution Proceeding and evidence from the other.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the two Notices to End Tenancy issued by the Landlord. These are: the One-Month Notice issued on August 31, 2022, and the 10-Day Notice issued on September 7, 2022.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes “related issues”, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

The matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the other issue concerning the Landlord’s entry to the rental unit, items b. to d. listed above in the Tenant’s Application. By Rule 2.3, these issues are unrelated, and I amend the Tenant’s Application to exclude this matter. The Tenant has leave to reapply on these other issues. This means they may file a new and separate application to address this, and this does not preclude proper consideration of these issues by another arbitrator.

Issues to be Decided:

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts and/or damages in the rental unit, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a single-page document that they labeled as a “tenancy agreement”. This bears the Tenant’s phone number, the Landlord’s phone number, the rent amount of \$800 and a “deposit” of \$400, stated to be “rent from April 01 2022”. Both the Landlord and the Tenant signed the single-page document.

The Landlord stated they did not know the Tenant would treat this as a tenancy agreement. The Landlord provided 6-page document in the standard form, containing some details about the tenancy, yet unsigned.

The Landlord issued the One-Month Notice on August 31, 2022. This set the end-of-tenancy date on September 30, 2022. An image of the first page of this document appears in the Tenant’s evidence; the full document copy appears in the Landlord’s evidence. The reasons listed on page 2 are:

- Tenant . . . has
 - seriously interfered with or unreasonably disturbed . . . the landlord
 - seriously jeopardized the health or safety or lawful right of . . . the landlord
 - put the landlord’s property at significant risk
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit

In the hearing, the Landlord presented several points of their communication with the Tenant over the months prior to the hearing. They stated the Tenant was “short-tempered, loud and abusive”. They had a disagreement with the Tenant about a cabinet in the rental unit that the Tenant requested to be removed. They described the Tenant “shouting, swearing at the Landlord” and the Tenant not complying with the Landlord’s request for the Tenant to clean up broken car glass that they left on the driveway. The incident with the car glass occurred on August 28 or August 29.

The Tenant stated they had mentioned their need to move items from their office to their rental unit living space that was quite small. They required the space taken up by the Landlord’s makeshift shelf unit, and this caused a disagreement to which the Landlord immediately threatened eviction. The Landlord initially advised the Tenant about an eviction via text message on August 30, to which the Tenant responded by requesting a formal written end-of-tenancy notice.

The Landlord here applied for an Order of Possession in line with the 10-Day Notice they issued to the Tenant on September 7, 2022. They presented a copy of the 10-Day Notice in their evidence, listing the amount of \$800 due on September 1, 2022.

In the hearing, they reviewed the Tenant's payment of rent for the months of September 2022 through to January 2023. According to the Landlord, the Tenant did not pay rent for September; however, they paid \$1,200 on October 16, 2022. Each consecutive month after this, the Tenant paid rent, albeit on a date after the 1st of each month.

The Tenant presented their difficulty with trying to get the Landlord to accept electronic payment of rent, which the Landlord basically refused. The Tenant acknowledged owing \$400 from the month of September.

Analysis

The parties agreed on the basic terms of the tenancy agreement: the rent amount of \$800, payable on the first of each month. I therefore find this basic term to be fact.

The *Act* s. 47 provides authority for a landlord to issue a notice to end tenancy if the tenant commits actions such as those the Landlord here indicated on page 2 of the One-Month Notice.

I find the behaviour of the Tenant, as listed by the Landlord in the hearing, does not amount to significant interference, unreasonable disturbance, or any sort of jeopardy to the Landlord's well-being, or a risk to the Landlord's property. The Landlord did not provide evidence on significant *actions* of the Tenant that constitute grounds of the nature contemplated in s. 47 of the *Act*. I simply don't see an escalated disagreement, (with language used that the Landlord did not describe in detail) as warranting an end to the tenancy. Minus serious, definite threats of harm or damage to the property, the Landlord here has no reason to end the tenancy.

The Landlord also did not describe incidents with reference to dates, times, and details on exactly what the Tenant said. The Landlord's references throughout were to bad language, which is vague. The Landlord bears the onus to prove they have sufficient reasons to end the tenancy; the Landlord did not meet that onus here.

I find the One-Month Notice is not valid for these reasons. I therefore order the One-Month Notice cancelled, and of no force or effect.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (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 of the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The *Act* s. 46 provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid on any day after the day it is due, with a notice giving an effective date that is not earlier than 10 days after the date the tenant receives the notice.”

A tenant has five days from receiving the 10-Day Notice to either pay the overdue rent or dispute the notice at the Residential Tenancy Branch.

I find, from the Tenant’s statement in the hearing, that the rent payment for September was not paid within the 5-day time limit.

Under s. 55 of the *Act*, when a tenant’s application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the 10-Day Notice does not comply with the requirements of form and content. The 10-Day Notice is missing an effective date; this is required as per s. 52(c). Therefore, I find the Landlord here is not entitled to an Order of Possession. The 10-day is cancelled, and the tenancy will not end for this reason.

In their Application, the Landlord applied for rent amounts owing from the Tenant. At the time of their Application on September 17, 2022, this amount was \$800, for the month of September 2022. The Landlord stated the Tenant paid for half this amount on October 16, 2022. In line with this, I grant the Landlord a Monetary Order for the remaining amount of rent owing – which the Tenant admitted to – as \$400.

I find the Landlord was not successful on their Application for an Order of Possession based on the 10-Day Notice; therefore, I make no award for reimbursement of the Application filing fee to them.

Conclusion

I grant the Tenant's Application for cancellation of the One-Month Notice. There is no order of possession to the Landlord, and the tenancy shall continue.

For the reasons outlined above, I dismiss the Landlord's Application for an Order of Possession in line with the 10-Day Notice, without leave to reapply.

I order the Tenant to pay the Landlord the amount of \$400, pursuant to s. 67 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it can be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 23, 2023

Residential Tenancy Branch