



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL, MNDL, OPC, CNC, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, a monetary Order for damage to the unit, and to recover the fee for filing an Application for Dispute Resolution. The Landlord has named the Tenants with the initials “CS” and “SK” as Respondents, and any Orders granted to the Landlord as a result of these proceedings will only name those parties.

The Agent for the Landlord stated that the Dispute Resolution Package was sent to the Tenants, via registered mail, on October 21, 2022. The Tenant with the initials “CS”, hereinafter referred to as “CS”, acknowledged that these documents were received by the Tenants.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a One Month Notice to End Tenancy for Cause, to dispute a rent increase and to recover the fee for filing an Application for Dispute Resolution.

“CS” stated that the Dispute Resolution Package was sent to the Landlord, via registered mail, although he cannot recall the date of service. The Agent for the Landlord acknowledged that these documents were received by the Landlord.

The Landlord submitted evidence to the Residential Tenancy Branch on various dates. The Agent for the Landlord stated that these documents were not served to the Tenants as the rental unit was vacated before the deadline for serving evidence. As this evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

The Tenants submitted evidence to the Residential Tenancy Branch on various dates. "CS" stated that these documents were not served to the Landlord. As this evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Landlord has identified issues on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in this Application for Dispute Resolution is possession of the rental unit and I will, therefore, only consider issues related to that matter, which include:

- the Tenant's application to cancel a One Month Notice to End Tenancy for Cause;
- the Landlord's application for an Order of Possession;
- the Landlord's application for a monetary Order for unpaid rent; and
- the filing fee paid by both parties.

The Landlord's application for a monetary Order for damage to the unit is dismissed, with leave to re-apply, as that issue is not sufficiently related to possession of the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or unpaid utilities?

Should the One Month Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on October 01, 2021 and that there is no written tenancy agreement.

The Agent for the Landlord stated that when the tenancy began the rent was \$1,000.00 and that rent has not been increased. "CS" stated that when the tenancy began rent was \$850.00 and that rent was increase to \$1,000.00 on November 01, 2021.

The Landlord stated that no rent has been paid for October or November of 2022. "CS" stated that rent for October of 2022 was paid on October 11, 2022 and rent for November of 2022 was paid on November 17, 2022.

The parties agree that rent for this tenancy has always been paid in cash and that rent receipts were not provided to the Tenant at the time of payment. The Agent for the Landlord stated that the Landlord provided the Tenants with a series of rent receipts for previous rent payments on November 04, 2022. The Tenant denies receiving the series of rent receipts.

The Landlord stated that since the rental unit has been vacated, the Landlord wishes to withdraw their application for an Order of Possession. "CS" stated that the rental unit has been vacated and they wish to withdraw their application to cancel a One Month Notice to End Tenancy for Cause.

Analysis

As the Landlord has withdrawn the application for an Order of Possession and the Tenants have withdrawn their application to cancel the One Month Notice to End Tenancy for Cause, I find there is no need for me to consider the merit of any Notice to End Tenancy served to the Tenants.

I find that the Tenants have submitted no evidence to support their testimony that rent was increased from \$850.00 to \$1,000.00. In reaching this conclusion I find that there is documentary evidence before me, such as an email or bank records, to support their submission that rent was \$850.00 at the start of the tenancy.

As the Tenants are alleging that a rent increase has been imposed which does not comply with the legislation, the onus on proving that assertion rests with the Tenants. I find that the Tenants have failed to meet this burden of proof and I cannot conclude that there has been a rent increase that does not comply with the legislation.

As the Landlords are alleging that rent has not been paid, the onus on proving that claim rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash.

Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made.

The undisputed evidence is that the Landlord did not provide rent receipts at the time rent was paid. Although the Landlord provided the Tenants with a series of rent receipts in November of 2022, I cannot conclude that those receipts have significant evidentiary value as they were not provided at the time of payment. Providing such receipts "after the fact" does not establish a credible method of recording payment. I therefore cannot rely on those "late" receipts when determining whether rent has been paid for October and November of 2022.

I find that the Landlord's failure to comply with their legal obligation to provide rent receipts has significantly impaired the Landlord's ability to prove that the Tenants did not pay her rent in cash in October and November of 2022. There is no other evidence before me, such as a copy of a payment ledger or bank statements, to corroborate the claim that the Tenants did not pay rent for October and November of 2022.

I find that the Landlord has failed to meet the burden of proving that rent is still due for October and November of 2022 and I dismiss the claim for unpaid rent.

As the Tenants withdrew their application to cancel a One Month Notice to End Tenancy for Cause, I find that they have failed to establish the merit of their application to cancel that Notice. I find that the Tenants failed to establish that there was an unlawful rent increase and I therefore find that the Tenants are not entitled to compensation for filing their Application for Dispute Resolution.

As the Landlord withdrew their application for an Order of Possession, I find that they have failed to establish the merit of their application for an Order of Possession. I find that the Landlord has failed to establish that rent was owed and I therefore find that the Landlord is not entitled to compensation for filing their Application for Dispute Resolution.

Conclusion

The Tenants withdrew their application to cancel a One Month Notice to End Tenancy for Cause. The Landlord withdrew their application for an Order of Possession.

The remaining issues in the Tenants' Application for Dispute Resolution are dismissed, without leave to reapply.

The remaining issues in the Landlord's Application for Dispute Resolution are dismissed, without leave to reapply.

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: February 07, 2023

Residential Tenancy Branch