



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: OPR-DR
Tenant: CNR, MNDCT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on November 10, 2022 seeking a cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”), and compensation for monetary loss.

The Landlord filed an Application by Direct Request on November 2, 2022 for an order of possession. The Landlord’s Application was crossed to that of the Tenant.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 16, 2023. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions.

Preliminary Matter – parties’ service of Notice of Dispute Resolution Proceeding and evidence

The Tenant recalled serving the Notice of Dispute Resolution Proceeding generated at the Residential Tenancy Branch for their Application to the Landlord in person. They could not recall the exact date on which they completed service. The Landlord who attended the hearing confirmed they had this document from the Tenant that set out the details of the Tenant’s Application. Minus evidence to the contrary, I find it more likely than not that the Tenant served this information to the Landlord, as required, in a timely manner.

With their initial Application, the Tenant provided a copy of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”), ostensibly served by the Landlord on November 1, 2022. The Tenant did not provide or serve other documents for evidence in this hearing.

The Landlord stated they provided a package to the Tenant in November 2022. This was in person, as the Landlord stated in the hearing. The Tenant stated they received no additional paperwork from the Landlord, aside from the 10-Day Notice in November, and another end-of-tenancy notice in March 2023.

Given that the Tenant did not confirm they received notification of the Landlord’s Application in this dispute proceeding, and no clear proof of service thereof from the Landlord, I exclude evidence provided by the Landlord from consideration.

Issues to be Decided

Is the Tenant entitled to cancellation of the 10-Day Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an order of possession in line with the 10-Day Notice?

Is the Tenant entitled to compensation for money owed pursuant to s. 67 of the *Act*?

Background and Evidence

The parties confirmed that the rent amount is \$450 per month, normally payable on the first day of each month. This is for a single room at the rental unit property.

The Tenant could not recall the exact date they received the 10-Day Notice from the Landlord. In the hearing they verified the specific form used – identified as “RTB-30” – and stated there was no signature on the document. When I questioned the Tenant about this document specifically in the hearing, they stated that they could not identify any portion of the document or its contents that set out dollar amounts owing to the Landlord for rent allegedly unpaid.

When I asked the Landlord to verify the document and its contents in the hearing, the Landlord could not locate their copy. As stated by the Landlord: “whatever I gave you

[i.e., the Residential Tenancy Branch] is the correct one". The Landlord reviewed the account as maintained by the property manager, and referred to the most-recent payment of \$375 in August 2022 as being all that was paid over the past several months.

The Tenant acknowledged that they did not pay rent for the last two months prior to the scheduled hearing date. This was because "the Landlord hasn't come around" to collect rent. In the hearing, the Tenant stated that they were ending the tenancy, with March 31, 2023 being the final day. The Landlord stated this was new information to them.

The Tenant set out their monetary compensation claim, specifying the amount of \$7,503. This was for a total of \$681 they spent in bug spray to control pests in the rental unit. In addition, they had an allotment of plywood stolen from the rental unit property, in an unspecified amount. Additionally, they had to purchase a new bed because of the persistent bed bug problem, at a cost to them of \$1,130. The refrigerator in the rental unit was broken, which spoiled the Tenant's food, at a cost of \$600, as stated in the hearing.

Analysis

Above, I omitted the Landlord's evidence because there was no proof they served it to the Tenant for consideration in this hearing process.

The Landlord did provide a copy of the 10-Day Notice. This differs in substantive detail from the copy provided by the Tenant in the following ways:

- the Tenant's provided copy is 2 pages in total; the copy provided by the Landlord was three pages
- The Tenant's copy is signed (even though the Tenant stated it was not in the hearing); the Landlord's copy is unsigned in the required space.
- The Landlord's name on the Landlord's copy is misspelled, missing one letter "n" from the Landlord's surname.
- The Tenant's copy provides a separate listing of each month's \$450 amount, while the Landlord's copy sets out "450 x 6 = \$2700".
- Both the Tenant's and the Landlord's copy do not specify the exact date on which the rent amount was due, with both the Tenant and Landlord copy referring to

“June – November” instead of a required rent due date as specified on page 2 of the document.

As set out above, I omitted the Landlord’s evidence from consideration because of the service issue, meaning any evidence the Landlord provided is not for my consideration. I make one exception where the Landlord intended to rely on a notice-to-end tenancy in this matter. Given the differing traits of the document submitted by each of the parties in this hearing, I cannot verify if the document is correct, containing the mandatory information that the *Act* specifies. Alternately, either the Tenant was not served a signed three-page full document, or the Landlord’s copy does not bear the Landlord’s signature.

The *Act* s.52 provides that a notice to end tenancy must be in writing and must contain the essential elements. These are: a date and signature; the rental unit address; and the effective date. Additionally, the notice must be in the approved form when given by a landlord. On my review, the 10-Day Notice issued by the Landlord here does not contain the necessary element of the Landlord’s signature; therefore, it does not comply with s. 52. Alternately, the Tenant’s version is not the full three-page document.

With the present inconsistencies, I cannot verify the correctness of any form the Landlord served to the Tenant to end the tenancy. The Landlord has not met the burden of proof to show the 10-Day Notice is valid; therefore, I cancel any 10-Day Notice issued by the Landlord. It is of no legal effect.

With the 10-Day Notice cancelled, the tenancy will continue and there is no order of possession. Similarly, I grant no compensation to the Landlord where the Tenant’s Application here for a cancellation of the 10-Day Notice is successful.

Turning to the Tenant’s claim for compensation, under the *Act* s. 7, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Applying these four criteria, I find the Tenant did not provide proof of the actual out-of-pocket expenses to them. On the basic level, I cannot verify the value of monetary loss to them. I dismiss the Tenant's claim for compensation for this reason.

Conclusion

I grant the Tenant's Application for cancellation of the 10-Day Notice. There is no order of possession to the Landlord. I dismiss the Tenant's claim for compensation, without leave to reapply.

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: March 21, 2023

Residential Tenancy Branch