



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910099005: CNR, CNC, RR, RP, PSF, LRE, OLC

File #910100285: OPR, OPC, MNRL, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on January 15, 2023 (the “10-Day Notice”);
- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on January 15, 2023 (the “One-Month Notice”);
- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 70 restricting the Landlord’s right of entry;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord files its own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- an order of possession pursuant to s. 55 after issuing the One-Month Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

R.M. appeared as the Tenant. A.A., an articling student, appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Tenant's Claims

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

In this instance, I find that the primary issue in both application is whether the tenancy will end, or continue, based on the notices to end tenancy. Indeed, some of the Tenant's claims are secondary to this issue, as no orders would be made should the tenancy come to an end.

Accordingly, I find that the Tenant's claims under ss. 32 (repairs), 65 (rent reduction), 27 and 62 (provide services or facilities), 62 (order that the Landlord comply), and 70 (restricting Landlord's entry) of the *Act* are not sufficiently related to the primary issue of the applications. These claims are severed pursuant to Rule 2.3 of the Rules of Procedure. In the case of the claim under s. 65 for a rent reduction, this claim is dismissed with leave to reapply. With respect to the Tenant's remaining claims, they may be dismissed with or without leave to reapply depending on whether the tenancy ends or continues.

I have also been given a copy of a decision dated February 6, 2023, the file number being listed on the cover page, which raises the issue of res judicata on a portion of the Tenant's application, specifically the claims under ss. 65 (rent reduction), 27 and 62 (provide services or facilities), 62 (order that the Landlord comply), and 70 (restricting

Landlord's entry) of the *Act*. Due to my severing these issues at the outset of the hearing, I make no findings on whether *res judicata* applies as it was not argued before me and simply note the issue should the Tenant choose to reapply on these claims.

The hearing proceeded strictly on the issues related to the 10-Day Notice and One-Month Notice.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) Is the One-Month Notice enforceable?
- 3) If so, is the Landlord entitled to an order of possession?
- 4) Is the Landlord entitled to a monetary order for unpaid rent?
- 5) Is the Landlord entitled to its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed that the Tenant is to pay \$1,500.00 in rent on the first day of each month.

According to the Tenant, he moved into the rental unit in July 2016 and paid a security deposit of \$1,100.00. The Landlord's agent advises that the Landlord purchased the property, taking ownership in July 2022. The Landlord's agent indicates that he was unsure when the Tenant moved onto the property or if a security deposit had ever been paid. It is unclear to me whether there is a written tenancy agreement as none has been provided to me.

The Landlord's agent advises that the 10-Day Notice and One-Month Notice were both served on January 15, 2023 after they were posted to the Tenant's door. The Tenant acknowledges receiving the 10-Day Notice and One-Month Notice, though says he did so on January 25, 2023. According to the Tenant, he could not retrieve the notices to end tenancy as he last resided at the property on or about November or December

2022. The Tenant tells me that the rental unit is uninhabitable as it has no heat and water. The Tenant says that due to this he is in and out of the property.

The Landlord's agent advises that when the property was purchased by the Landlord, the Tenant was told to pay rent to the Landlord directly. I am directed to an email exchange in the Landlord's evidence between the Tenant and the Landlord's solicitor on the purchase of the property dated between July 26, 2022 to August 2, 2022. In the exchange, the solicitor advises rent is to be paid to the Landlord followed by his assistant providing instructions on e-transfer payments.

The issue of rent payment was the subject of previous hearing before the Residential Tenancy Branch on November 7, 2022. I am provided with a copy of the decision for the previous application by the Landlord. Review of the decision shows that it was filed by the Landlord and was dismissed with leave to reapply for want of service. Despite the issues of service, the parties had discussed the issue of rent payment and the Tenant agreed to pay \$7,500.00 in arrears by sending the funds to Landlord's lawyer. Of note, the decision states the following:

At first the Landlord's representative was not able to confirm whether payment should be made to the Landlord personally or to the corporate entity. The Landlord's representative then stated that any payment could be made to the corporation through the law firm. The address of the law firm was confirmed during the hearing and the Tenant stated he would pay the \$7,500.00 by no later than close of business on November 8, 2022. The parties agreed the Tenant would make all future rent payments of \$1,500.00 to this address.

(Underline Added)

I am advised by the Landlord's agent that the issue of prospective rent payments were a problem for the firm and the Landlord and that the Landlord's law firm requested subsequent rent payments be sent directly to the Landlord via e-transfer. The Landlord's evidence includes requests to this effect following the November 7, 2022 hearing. According to the Landlord's agent, the Tenant continued to issue payment to the law firm rather than the Landlord directly. I am told by the agent that the Tenant sent his rent cheques to the law firm for January 1, 2023, February 1, 2023, and March 1, 2023.

The Tenant acknowledges having sent his rent to the Landlord's law firm, though argued he did so as there was an order to that effect based on the November 7, 2022 decision. The Tenant advises that when his rent cheques were returned to him for the three months as mentioned, he attended the bank on March 4, 2023 and had the cheques deposited directly. The Landlord's agent confirms that \$4,500.00 had been received.

I am provided with a copy of the One-Month Notice, which lists that it was issued on the basis that the Tenant was repeatedly late in paying rent, that the Tenant had put the Landlord's property at significant risk, that the Tenant had caused extraordinary damage to the property, and that the Tenant has failed to undertake required repairs. In the details of cause section of the One-Month Notice, the Landlord described the issues as follows:

Details of the Event(s):

1. The tenant has repeatedly paid rent late for 5 months of 2022 and January of 2023. The tenant falsely represented to the Residential Tenancy Arbitrator that he had not been advised of where and how to pay his rent. Despite being repeatedly advised that rent must be paid to the landlord by email at [REDACTED], the tenant either does not pay the rent or sends a cheque to the counsel for the landlord to be deposited into the landlord's counsel's trust account, which is not permitted by the Law Society trust accounting rules. Counsel for the landlord has advised the tenant of how to pay rent by email and registered letter and the tenant does not respond to the letter and refuses to accept the registered letter.
2. The landlord has received several notices from the City of [REDACTED] demanding that the property be cleaned up of the garbage and vehicles collected by the tenant. The landlord has repeatedly demanded that the tenant remove the vehicles and garbage from the property and the tenant fails or refuses to do so. The large amount of garbage and vehicles present a fire hazard and significant risk to people and animals on the property.

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy.

At the hearing, the Landlord's agent advises that the residential property is filled with junk and garbage and that the Tenant was asked to clean it up and failed to do so. This request appears to have first been made on July 26, 2022 upon request of the Landlord's solicitor in the email mentioned above with respect to rent payments. The Landlord's evidence includes subsequent correspondence making similar requests on November 27, 2022 and December 5, 2022.

The Landlord's evidence also includes photographs of the residential property, which I am told show its current state. The Landlord's evidence also includes a notice from the municipality. However, it is in relation to another property and was withdrawn by the Landlord's agent at the hearing. The Tenant says that the photographs provided show items that do not belong to him and predate his tenancy.

Analysis

The Tenant seeks orders cancelling the notices to end tenancy. The Landlord seeks an order of possession pursuant to the same notices to end tenancy and an order for unpaid rent.

Dealing first with the issue of service of the 10-Day Notice and the One-Month Notice, I accept that the notices to end tenancy were posted to the Tenant's door on January 15, 2023. I find that the Landlord did serve the notices to end tenancy in accordance with s. 88 of the *Act*.

I am told by the Tenant that he did not receive the notices to end tenancy until January 25, 2023 as he is in and out of the property due to it being uninhabitable. It is peculiar for a tenant to continue paying rent on a property which, by his own admission, is uninhabitable. Stranger still, review of previous decisions before the Residential Tenancy Branch provided to me by the Landlord would suggest the Tenant has not lived at the property since November 2020. Though this raises questions with respect to the nature of the tenancy, I accept that jurisdiction on this matter has already been asserted by the Residential Tenancy Branch as evidenced by the previous decisions.

I accept the Tenant does not currently reside at the property with any level of frequency such that it would be inappropriate to apply the deeming provisions of s. 90 of the *Act*. Accordingly, I find that the Tenant received both notices to end tenancy on January 25, 2023.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

In this instance, the Landlord alleges rent for January, February, and March was unpaid. The Tenant argues it was paid to the Landlord's lawyers, as per the November 7, 2022 decision. Review of the November 7, 2022 decision does not make an order of any kind. Indeed, the application was dismissed in its entirety for want of service. The arbitrator on that occasion simply noted the agreement made by the parties at the hearing.

Review of the November 7, 2022 decision is, however, clear that there was an agreement that the Tenant pay rent to the Landlord via his lawyer. I accept that this is likely an awkward problem for the Landlord's lawyer and may likely run afoul law society trust accounting rules. That being said, can the Tenant be found to have failed to pay rent by following through the agreement made with the Landlord's representative on November 7, 2022. I think not. The Tenant paid rent to the firm upon the terms of the agreement, which arguably ought not have been made given the rules pertaining to trust accounts. Landlord's counsel refused to accept the funds given the trust accounting rules. Despite this, the Tenant has made payment, with the parties confirming the funds were received by the lawyer.

I find that the Tenant has made payment of rent and cannot be found responsible for not paying rent by following through on the November 7, 2022 agreement. The 10-Day Notice is hereby cancelled and is of no force or effect. To clarify the issue prospectively, I make an order pursuant to s. 62(3) of the *Act* that the Tenant pay rent to the Landlord directly, with the method of payment to be determined by the parties.

Looking briefly at the unpaid rent claim, the parties confirm the law firm has received the rent payments such that I cannot make a finding that there are any arrears. I decline to grant an order for unpaid rent as rent has been received pursuant to an agreement the parties had entered on November 7, 2022.

Turning next to the One-Month Notice, under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to ss. 47(1)(b) (repeated late rent), 47(1)(d)(iii) (putting Landlord's property at significant risk), s. 47(1)(f) (causing extraordinary damage), and 47(1)(g) (failure to make repairs) of the *Act*. Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

In this instance, the Landlord alleges the Tenant has failed to clean up various items about the property. The notice lists that the municipality issued warnings to this effect, though the letter provided to me is for another property. The Landlord's representative withdrew this letter during the hearing. I note that the letter and the photographs are submitted in the form of an affidavit affirmed by an employee of the law firm retained by the Landlord. Based on that affidavit, it is unclear how the affiant would know if the photographs show the residential property. Indeed, the same affiant attests to a belief

that the Landlord has received “multiple letters” from the municipality on the issue. Despite this belief, the affidavit includes a letter from the municipality for another property altogether.

I am provided with an affidavit from the D.G., who identifies himself as the authorized representative for the Landlord. D.G. says he attended the property and witnessed various items left about the property. The Tenant’s testimony suggests there are various items on the property, though he tells me that these predate his tenancy.

On the evidence before me, I find that the Landlord has failed to discharge its evidentiary burden on the issue of the garbage at the property. It is entirely plausible that the items were left at the property prior to the tenancy, thus potentially making their removal by the Tenant exceedingly unfair. The Landlord, having recently purchased the property, has assumed that the items are the Tenant’s. Perhaps they are. On the evidence before me, that is unclear to me.

The final item on the One-Month Notice, being repeated late rent payments, cannot stand. As mentioned, the purported late rent of January, February, and March 2023 are the direct result of the November 7, 2022 agreement that rent be paid to the law firm. This is not the Tenant’s fault. Further, any late rent payments predating the November 7, 2022 agreement can no longer form the basis for ending the tenancy as the parties essentially settled that portion of the dispute. It is inconsistent, in my view, to settle late rent payments from July to November 2022 and set a prospective payment method to then issue notice to end tenancy for cause on the basis of those same rent payments. Such a position is estopped by virtue of the November 7, 2022 agreement.

I find that the Landlord has failed to show the cause listed within the One-Month Notice is valid. The One-Month Notice is also cancelled and is of no force or effect.

Conclusion

The 10-Day Notice and One-Month Notice are hereby cancelled and of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*. The Landlord’s claims for an order of possession pursuant to the 10-Day Notice and the One-Month Notice are dismissed without leave to reapply.

The Landlord’s claim for unpaid rent is dismissed without leave to reapply.

Those items severed from the Tenant's application under Rule 2.3 of the Rules of Procedure are dismissed with leave to reapply as the tenancy has continued.

I find the Landlord was unsuccessful in its application and that it is not entitled to its filing fee. Its claim under s. 72 of the *Act* is 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 *Residential Tenancy Act*.

Dated: April 04, 2023

Residential Tenancy Branch