



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNC, OLC, FFT
Landlord: OPR, MNRL, FFL

Introduction

On January 11, 2023, the Tenant filed their Application at the Residential Tenancy Branch: to dispute a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”); for the Landlord’s compliance with the legislation/tenancy agreement; and reimbursement of the Application filing fee.

On February 12, 2023 the Landlord applied for an order of possession of the rental unit, a monetary order for rent not paid, and their Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 9, 2023. Both the Tenant and the Landlord attended the hearing.

Preliminary Matter – unrelated issues

At the outset, I confirmed with the participants that, as a result of a prior hearing on April 20, 2023, the Arbitrator achieved a settlement in the matter. The parties agreed to an end-of-tenancy date for July 1, 2023. The Arbitrator granted an Order of Possession to the Landlord for that date.

Based on this, I find it is unnecessary to consider the Tenant’s Application to cancel the One-Month Notice and the Landlord’s Application for an order of possession because the end of this tenancy was previously settled, and the tenancy will end. I dismiss these parts of each Application.

Preliminary Matter – Tenant’s Notice of Dispute Resolution Proceeding and evidence

In the hearing I reviewed each party’s service of the Notice of Dispute Resolution Proceeding associated with each of their applications.

The Landlord confirmed they received a copy of the Tenant’s Notice of Dispute Resolution Proceeding. The Landlord stated they received no evidence from the Tenant associated with this hearing.

The Tenant stated they provided their evidence to the Landlord via registered mail. They gave a registered mail tracking number as proof of this in the hearing. The tracking record for that number reveals it was sent on January 20, 2023, then delivered to the recipient on January 23, 2023.

The Tenant’s evidence in question shows bank transactions from February 2023, and the year prior. The Tenant provided these records to the Residential Tenancy Branch on April 25, 2023.

Given that the evidence itself refers to dates *after* the Tenant is stating that they sent evidence to the Landlord, and that they provided evidence to the Residential Tenancy Branch on April 25, 2023, I find it more likely than not that they did not provide the evidence separately to the Landlord for this hearing. For this reason, I exclude the Tenant’s evidence from consideration in this hearing.

Preliminary Matter – Landlord’s evidence

The Residential Tenancy Branch provided the Notice of Dispute Resolution Proceeding stemming from the Landlord’s Application to the Landlord on February 8, 2023. The Landlord provided registered mail tracking numbers for a copy of the Notice of Dispute Resolution Proceeding sent to each Tenant, sent on April 17, 2023. The Landlord provided their evidence to the Residential Tenancy Branch on this same date.

The Landlord appointed an agent for the purpose of handling this hearing, particular to this tenancy. A document signed by the Landlord for that purpose is in the Landlord’s evidence. The Tenant referred to this document in the hearing and referred to other pieces of the Landlord’s evidence in the hearing. I find the Landlord completed service of the Notice of

Dispute Resolution Proceeding, as well as their evidence to each of the two Tenants, within the timeline set in the *Residential Tenancy Branch Rules of Procedure*.

For the reasons set out above, I give the Landlord's evidence full consideration in this hearing, where necessary and relevant to my findings of fact as set out below.

Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts owing, pursuant to s. 67 of the *Act*?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement with respect to matters of rent payment, as per s. 62 of the *Act*?

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

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

Background and Evidence

I set out only the background and evidence that is relevant to the analysis below that forms the basis for my final decision in this matter. There were other issues presented by the Tenant in the hearing; however, I find they were not related to the key issue herein. I describe, in this section, only the evidence and submissions relevant to my findings and decision below.

In their evidence, the Landlord provided a basic "rental agreement overview". This sets out that the tenancy started on January 1, 2021, with the rent payable on the 20th of each month. The rent amount was \$800 throughout, and the Landlord collected a security deposit of \$400 from the Tenant at the start of the tenancy.

The Tenant in the hearing confirmed that this was a verbal agreement and there was no signed tenancy agreement document. According to the Tenant, the rent amount of \$800 was payable each month on the 15th. The Tenant pointed out that a problem with monthly rent arose in November 2022 when the Landlord proposed raising the rent to \$1,500. In response

the Landlord denied that there was a rent increase imposed on the Tenant, and the rent amount remained at \$800 from the start of the tenancy.

The Landlord served a 10-Day Notice to End Tenancy for Unpaid Rent to the Tenant on January 23, 2023, and again on March 29, 2023. On page 2 of the document the Landlord provided the rent amount owing of \$8,000 due on March 15, 2023.

The Landlord provided registered mail receipts and tracking number labels to show that they served this 10-Day Notice to the Tenant on March 30 via registered mail. The tracking record shows the mail unclaimed, with a final notice going to the Tenant on April 10, 2023, meaning the mail would return to the Landlord 10 days later.

The Tenant denied receiving this March 29, 2023 10-Day Notice from the Landlord.

In the hearing the Landlord clarified that the Tenant did not pay rent since May 2022. For each month for the rest of 2022, and into March 2023, the Landlord recorded no payments and an accumulated rent amount owing of \$8,000. Including the month prior to this hearing, April 2023, the Landlord clarified that the current up-to-date balance was \$8,800.

The Tenant, via the person who attended the hearing to assist them, stated they have been paying the rent amount each month as required, for the whole period in question. They described paying rent each month with cash. They described their evidence as showing bank withdrawals for cash for the months in question. This would be each of the two Tenants withdrawing \$400 each, then paying the combined amount to the Landlord.

Analysis

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.

I find the agreement between the parties was for the rent amount of \$800 each month, payable on the 20th of each month.

Though the validity of the Landlord's 10-Day Notice served on March 30, 2023 is not in question, I accept that document as evidence of the rent amount owing as of that date. The Tenant did not provide evidence as required for this hearing; therefore, there is no direct evidence showing that the Tenant paid rent consistent with the agreement as required.

In general, the Tenant was very disorganized in the hearing, and the person who attended with them explained the issue from their perspective. It is not clear how this person knew firsthand information about the Tenant's discussions with the Landlord, and how the Tenant was providing rent payments to the Landlord. I draw down the Tenant's account and statements in the hearing and give this testimony less weight for these reasons.

The Tenant did not provide any evidence to show they paid the rent amounts to the Landlord, from May 2022 onwards. I find it more likely than not that they did not pay rent to the Landlord as required. That forms the substance of end-of-tenancy notices served to them by the Landlord, and the Tenant is simply not credible on their version of events that was not clearly presented in the hearing.

I find it more likely than not that the Tenant did not pay the full amount of rent each month as required. The *Act* s. 26 applies in this situation, and the Tenant had no authorization to withhold rent for any reason. I find the Tenant breached s. 26 of the *Act*, for each month in question.

I dismiss the Tenant's plea for the Landlord's compliance with the *Act* and/or the tenancy agreement. The only relevant ground at this stage is the Tenant's statement that the Landlord required cash payment of rent each month, which is neither prohibited nor restricted under the *Act*.

I find the Landlord was clear on the amount owing, and provided a record in their evidence of the dates in question when they did not receive payment. On my assessment of the Landlord's credibility on this point, as well as the Tenant's lack of proof of rent paid, I grant the Landlord a monetary order for rent amounts owing. This is \$8,800 as of the date of this decision.

The Landlord was successful on this piece of their Application; therefore, I grant reimbursement of the Application filing fee to them. I issue a Monetary Order to the Landlord for the amount of \$8,900.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the One-Month Notice, without leave to reapply. I dismiss the Landlord's Application for an order of possession, without leave to reapply.

I order the Tenant to pay the Landlord the amount of \$8,900, as compensation for rent amounts owing, and for reimbursement of the Application filing fee. I grant the Landlord a monetary order for this amount. Should they choose, the Landlord may file this Monetary Order in the Provincial Court (Small Claims) where it will 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: May 10, 2023

Residential Tenancy Branch