



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNL-MT, MNDCT, OLC
Landlord: OPU-DR, FFL

Introduction

The Tenant filed their Application for Dispute Resolution on January 20, 2023 seeking

- a) an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”),
- b) more time in which to make that Application.
- c) compensation for monetary loss or other money owed
- d) the Landlord’s compliance with the law/tenancy agreement.

On January 21, 2023 the Landlord filed an Application for an Order of Possession based on the same 10-Day Notice, and reimbursement of the Application filing fee. The Tenant’s Application was already in place and the Residential Tenancy Branch joined the Landlord’s Application 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 May 15, 2023. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the other’s Notice of Dispute Resolution Proceeding document and prepared documentary evidence.

Preliminary Matter – relevant issues

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 the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing 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 10-Day Notice issued by the Landlord. Therefore, I dismiss two of the Tenant’s other grounds for dispute resolution, with leave to reapply: compensation for money owed; and the Landlord’s compliance with the legislation/tenancy agreement.

Issues to be Decided

Is the Tenant allowed more time in which to make their Application, pursuant to s. 66 of the *Act*?

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

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

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

Background and Evidence

In the hearing, the parties agreed that a basic tenancy agreement was in place. This provides for the Tenant’s payment of rent at \$920 as of the start of the tenancy in 2011. The rent increased to \$1,199 as of January 1, 2023. This is shown in the Landlord’s notice of rent increase they provided to the Tenant on September 26, 2022.

Both parties in their evidence provided a copy of the 10-Day Notice, served on January 3, 2023. This set the end-of-tenancy date at January 17, 2023. The Landlord provided a rent amount owing of \$1,434 on page 2 of the document, due on January 1, 2023.

The Landlord's witness who attended the hearing stated they observed the Landlord serve the 10-Day Notice to the Tenant on January 3, 2023, by attaching it to the door of the rental unit on that date.

The Landlord in the hearing stated they observed the 10-Day Notice was no longer attached to the Tenant's door on January 4, 2023.

The Landlord set out that this amount consisted of the basic rent amount of \$1,199, plus amounts owing for locker rental at the property. The Tenant paid the balance owing for those lockers in the amount of \$160 on January 6.

The Tenant presented a copy of a letter addressed to them, dated January 3, 2023. The Landlord could not identify this letter in their own evidence and did not recall this letter in the hearing. This provided for the Tenant owing \$105 in storage locker fees, and a \$1,329 January rent payment, for the total of \$1,434. Also, in the letter the Landlord set out the amount of \$1,329 as the monthly rent amount of \$1,199 plus \$110 for locker storage amounts going forward.

In the Landlord's record is a different letter dated January 3, 2023. This set out the full payment for January rent was still outstanding, along with a locker storage amount. In the hearing, the Landlord clarified: by January 17 they accounted \$75 toward the Tenant's account, meaning that the locker storage fees were no longer an issue.

The Landlord also provided another letter dated January 18, 2023, providing a receipt for "use and occupancy only" of the rental unit, for the rent amount of \$1,199 paid by the Tenant on January 16, 2023. In this letter, the Landlord also set the Tenant's move-out date for January 31, 2023.

In the hearing the Tenant stated they returned to their rental unit in later January. They worked in a different location and stayed with a friend elsewhere because of their work in a different municipality. When asked directly for a date, the Tenant stated it was "maybe the 15th or the 18th" when they discovered the 10-Day Notice at the rental unit. Prior to this, the Landlord would message them via text message or email if rent was late or still owing.

The Tenant had previously prepared three cheques to present to the Landlord after receiving the January 3 letter. In actuality they gave the Landlord 2 cheques, with the third for the full rent amount remaining stuck in their handbag, remaining unpaid. The bank confirmed with the Tenant that only two cheques were cashed by the recipient. Additionally, the Landlord presented that the Tenant provided two cheques, with the rent amount left outstanding.

The Tenant presented that cheque payments to the Landlord were necessary because the Landlord's previous online portal system presented challenges in terms of amounts and when they registered as paid, e.g., on the 5th or 10th of each month, when rent should show as paid on the 1st. This left many late reminders from the Landlord, which had changed the online system in place to another online system based on inaccuracies. From the Landlord's perspective, they referred to their ledger and stated there was a history of late payments from the Tenant.

The Tenant also pointed to their long history as a Tenant in the rental unit. They provided that this is the single time when the Landlord made an issue out of a late rent payment, and they never received any other complaints as a tenant otherwise.

The Landlord presented a ledger showing the following:

1/1/2023	1/1/2023	\$1,199.00 Residential Rent	\$1,254.00 Residential Rent
1/1/2023	1/1/2023	\$80.00 Large Locker	\$1,334.00 Large Locker
1/6/2023		-\$160.00	\$1,174.00 Payment Received
1/17/2023	2/1/2023	\$100.00 Small Locker	\$1,274.00 Dec/22 & Jan/23 Small Locker
1/17/2023		-\$1,199.00	\$75.00 Payment Received

The Landlord also presented a Monetary Order worksheet that shows each line amount, totalling \$1,434:

- \$105 carried over as locker storage charges from December 2022
- \$1,199, January 2023 rent
- \$130, a January 2023 storage balance

In the hearing, the Landlord confirmed their need for possession of the rental unit. They recounted a history of late rent payments from the Tenant over the course of this tenancy.

Analysis

The Act s. 46(1) states that a landlord may end a tenancy by giving a 10-Day Notice “if rent is unpaid on any day after the day it is due . . .”

Following this, s. 46(4) states that within 5 days of receiving a 10-Day notice a tenant may dispute the notice or pay that overdue rent in which cause the notice has no effect. Where a tenant does not make the application within 5 days, or pay the rent, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

From what the Landlord presented on rent amounts owing, I find there is conflicting evidence on the account in place. I grant that “rent” includes amounts for services and facilities. The amount indicated on the 10-Day Notice is \$1,434; however, the Landlord’s ledger shows \$1,334. Based on this, I am not satisfied the amount shown on the 10-Day Notice is accurate as shown.

I find the Tenant made their rent payment as soon as possible in the circumstances. I accept the Tenant’s account that they had the rent payment ready, but they missed it as one of three cheques they forwarded to the Landlord on January 3. I find this is partially owing to the unreliability of the Landlord’s payment portal system that was previously utilized, requiring the use of cheques, as presented by the Tenant in the hearing. I also give weight to the Tenant’s evidence that rent amounts strictly being paid on the 1st of each month was not a problem for the Landlord in the past. Also, this has been quite a long-term tenancy in place.

Owing to the unreliability of the Landlord’s account with respect to locker charges owing, I find the amount listed on the 10-Day Notice is not accurate with respect to the Landlord’s ledger.

I find the 10-Day Notice was unwarranted in this case, and I find the amount was not correct as shown elsewhere in the Landlord’s evidence. I find the Tenant made the payment as soon as possible. I accept the Tenant’s account that they were staying elsewhere for the month of January and found the 10-Day Notice on their door on January 15th. They made the rent payment the following day, and then applied to the Residential Tenancy Branch on January 20, 2023. I accept that exceptional circumstances were in place for the Tenant at that time.

Conclusion

For the reasons outlined above, I dismiss the Landlord's Application for an order of possession and grant no reimbursement of the Application filing fee.

I grant the Tenant's Application for a cancellation of the 10-Day Notice. That end-of-tenancy notice is of no force or effect.

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 17, 2023

Residential Tenancy Branch