



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's November 24, 2023, and the Landlord's December 1, 2023, Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The Tenant Applied For:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord Applied For:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act

- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord D.S.U. was served in-person on December 2, 2023, in accordance with section 89(1) of the Act.
- I find that Tenant K.S.J. was served in-person on December 2, 2023, in accordance with section 89(1) of the Act.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Landlord's evidence was not served to the Tenants in accordance with section 88 of the Act.

Preliminary Matters – Issues to Be Heard

At the outset of the hearing, the parties were advised that the only matters related to the 10 Day Notice and One Month Notice would be heard at this hearing as these were the primary, shared and most pressing issues and that all other issues would be dismissed with leave to reapply unless time permitted their hearing.

As only matters related to the notices were heard, all other matters included in the Tenant's application are hereby dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to the cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act?
2. Is the Tenant entitled to cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act?
3. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?
4. Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act?
5. Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

6. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Testimony was provided by the parties indicating that the tenancy began on February 1, 2022, with a monthly rent of \$1,600.00 due on the first of each month. A security deposit in the amount of \$800.00 and a pet deposit in the amount of \$800.00 was paid by the Tenant.

According to the Landlord, a 10 Day Notice for unpaid rent for November 2023 in the amount of \$1,600.00 was served to the Tenant in person on November 20, 2023.

The Landlord testified that the Tenant always paid cash in installments and that receipts had sometimes been issued in the past. The Landlord further testified that he did not have bank statements or a ledger to show rental income transactions as he uses the cash to pay his own bills.

The Tenant testified that M.C. paid the Landlord's spouse A.U. \$1,100.00 on November 11, 2023, and that she paid an additional \$450.00 to A.U. on November 13, 2023 and that she withheld \$50.00 per the Landlord's permission as compensation for having to purchase bottled water.

The Landlord disputed the Tenant's statement that cash had been paid to his spouse in November 2023 and testified that while he did authorize the Tenant to withhold \$50.00 it was only supposed to be for a period during which the pump was being replaced.

According to the Landlord, he also issued a One Month Notice in person to the Tenant on November 20, 2023, because the Tenant and occupant M.C. were:

1. using more than two parking spots to do mechanical work on vehicles
2. had left garbage around the property
3. had built a shed without a permit
4. had closed off the Landlord's driveway and created a new one
5. had used too much water for pressure washing

The Landlord testified that these issues were raised with the Tenant and M.C. verbally. He further testified that M.C. kept telling him the owners of the additional vehicles taking up parking spots would be coming to get them, but they never did.

According to M.C., he has never built or repaired vehicles in the driveway and there were never more than two vehicles parked by them on the property. He stated that the

tenancy agreement does not specify how many vehicles can be parked on the property. He further stated that the upper suite tenants damaged the driveway during the winter and that he repaired it for the Landlord.

According to M.C., he used his pressure washer to clean the oil off the driveway left by the previous tenants and to clean the roof of the home for the Landlord. He stated that they assisted the Landlord with planting blueberries which use lots of water. He further testified that the Landlord's spouse gave him permission to build the shed and that the shed's dimensions were within the limits not requiring a permit and that the Landlord does not provide them with adequate city garbage receptacles because the suite is not legal. Pictures of garbage and recyclables stacked in a trailer were submitted as evidence.

The Landlord confirmed that M.C. had used the pressure washer as stated and testified that he was not sure if his spouse had given permission to the Tenant to build a shed.

Analysis

Is the Tenant entitled to the cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

Based on the method of service used by the Landlord, the Tenant's application for dispute resolution on November 24, 2023, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

I find that the Landlord did not provide receipts as required under section 26(2) of the *Act* and, in the absence of testimony from the Landlord's spouse, I accept the Tenant's testimony that the rent was paid to the Landlord's spouse in cash as was customary between the parties for all of the rent due for November 2023.

Relying on the testimony of both parties, the evidence submitted and on a balance of probabilities, I find that the Tenant paid her rent in full for November 2023 and therefore the notice issued on November 20, 2023, was not valid.

For the above reasons, the Tenant's application for cancellation of the Landlord's 10 Day Notice (the 10 Day Notice) under section 46 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

The Landlord is ordered to provide rent receipts in accordance with section 26(2) of the Act for all rental payments made in cash effective immediately.

Is the Tenant entitled to cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act?

Section 47 of the Act states that a Landlord may issue a Notice to End Tenancy for Cause to a Tenant if the Landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the Tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the Tenant files an application to dispute the notice, the Landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed this notice on November 24, 2023, and since I have found that the One Month Notice was served to the Tenant on November 20, 2023, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

I find, based on the evidence, testimony of the parties and on the balance of probabilities, that, in addition to finding that the Landlord failed to prove any of the grounds specified on the notice occurred, none of the grounds stated constitute breaches of the tenancy agreement.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act?

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to an Order of Possession based on the November 20, 2023, notice. The Landlord's application for an Order of Possession is dismissed without leave to apply.

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to a Monetary Order for unpaid rent based on the November 20, 2023, notice. The Landlord's application for a Monetary Order is dismissed without leave to apply.

Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

I grant the Tenant a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
a reimbursement of the filing fee under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

The Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

The Landlord's application for an Order of Possession under sections 46 and 55 of the Act is dismissed without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 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: January 18, 2024

Residential Tenancy Branch