



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, PSF, OLC, FFT / OPR, MNRL-S, MNDCL-S, LRSD, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the Act;
- An order requiring the Landlord to provide services or facilities as required by the tenancy agreement or the Act under section 62 of the Act;
- An order for the Landlord to comply with the Act, the *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 62 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Landlord requests the following:

- An Order of Possession based on the Notice under section 55(2)(b) of the Act;
- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order for loss under the Act, Regulation, or tenancy agreement, under section 67 of the Act;
- Authorization to retain all, or a portion, of the Tenant's security deposit under section 38 of the Act; and
- Authorization to recover the filing fee under section 72 of the Act.

The Tenant and their Agent attended the hearing. Two Agents for the Landlord attended for the Landlord.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for the other's Application and the other's evidence. Based on their testimonies I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

Preliminary Issues

Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and the other issues were not sufficiently related. I exercised my discretion to dismiss with leave to re-apply all claims other than the one related to the Notice. Leave to reapply is not an extension of any applicable time limit.

Unpaid Rent

At the outset of the hearing the Landlord's Agent informed me the Tenant did not owe any outstanding rent and as a result, the Landlord no longer sought a Monetary Order of any kind. Given this, I find the Landlord's monetary requests are now moot.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act.

Therefore, I exercise my authority under section 62(4)(b) of the Act to dismiss all claims within the Landlord's Application without leave to reapply, other than the request for an Order of Possession and to recover the cost of the filing fee from the Tenant.

Issues to be Decided

- Should the Notice be canceled? If not, is the Landlord entitled to an Order of Possession?
- Are either party entitled to recover the filing fee from the other?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on December 1, 2001.
- Rent is currently \$759.69 per month due on the first day of the month.
- The Landlord took ownership of the residential property in which the rental unit is situated in July 2023.
- A security deposit of \$275.00 was paid by the Tenant which the Landlord still holds in trust.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit.

A copy of the Notice was entered into evidence. The Notice is on the approved form and is signed and dated February 3, 2024, and provides an effective date of February 17, 2024. The reason for ending the tenancy, per the Notice is the Tenant has failed to pay rent of \$759.69 due on February 1, 2024.

MM testified as follows. They served the Notice on February 3, 2024 by registered mail as the Tenant did not pay the rent due on February 1, 2024. The Tenant paid the outstanding rent due on February 26, 2024 by cheque. There is no outstanding rent owed by the Tenant, as the rent due on March 1, 2024 was paid on time. The Landlord seeks an Order of Possession based on the late rent payment due February 1, 2024.

The Tenant and their Agent testified as follows. The Landlord issued a notice to all tenants of the residential property informing the tenants that one of the Landlord's Agents, JY, would no longer be visiting them in-person to collect rent and that there would be a new system where rent would either be paid by e-transfer, or by cheque to a

mailbox outside of the laundry room in the residential property. A copy of the notice dated January 30, 2024 was entered into evidence.

There was no mailbox in place, so the Tenant was not able to pay rent. The mailbox was not put up until February 7, 2024, and the Tenant put their cheque for the rent due February 1, 2024 in the mailbox on February 8, 2024. The Notice was received on February 9, 2024 via registered mail and the Tenant called JY immediately to discuss the matter, but there was no answer, so a voicemail message was left to which there was no response.

In response to the testimony of the Tenant and their Agent, JY said that they could not find the Tenant's cheque in the mailbox until February 26, 2024, and that the mailbox was put up on February 5, 2024. They also stated that other tenants of the residential property had slid cheques under the door of the office before the mailbox was put up.

MM stated there were no telephone calls received from the Tenant about paying rent, and that it was possible for the Tenant to make contact, given they had called in the past to arrange for rent collections from JY.

DM was called as a witness by the Tenant who testified as follows. They are a friend of the Tenant and live across the hallway from them. They received a letter from the Landlord dated January 30, 2024 advising in-person collection of rent would no longer be happening. There was no mailbox at this time and no way to pay rent, so they called JY who told them to slide their cheque under the door of the office, which they did, though it was a tight fit. They did not pass the message about providing cheques under the door of the office on to the Tenant. They observed a technician come to install the mailbox near the laundry room at the residential property at around 7:00 PM on February 8, 2024.

In closing, the Tenant's Agent argued the Tenant had never missed any prior rent payments and did not slide a cheque under the door of the office as this was not in the instructions on the letter from the Landlord. They also argued the Tenant does not have the ability to use e-transfers due to language barriers and cultural differences.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, a landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel a Notice to End Tenancy.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent when it is due by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. Section 46(4) of the Act allows a tenant to dispute a Notice to End Tenancy for unpaid rent by making an application for dispute resolution within five days of receiving the notice.

I find the Notice was issued on February 3, 2024 via registered mail so would have been deemed received on February 8, 2024, the fifth day after sending, per section 90(a) of the Act. The Tenant acknowledged receipt of the Notice on February 9, 2024 and submitted their Application on February 10, 2024. Given this, I find the Tenant has disputed the Notice within the timeframe set out in section 46(4) of the Act and per Rule 6.6 of the Rules of Procedure, the onus is on the Landlord to establish their reasons for ending the tenancy on a balance of probabilities.

It is clear from section 26 of the Act that it is for a tenant to ensure that rent is paid and is not incumbent on a landlord to collect rent, though in this case it appears to have been an established practice for one of the Landlord's Agents, JY, to visit tenants of the residential property on the first day of the month to collect rent in-person.

It was undisputed that the Landlord issued a notice on January 30, 2024 to the tenants advising JY would no longer collect rent in-person and future rent payments would need to be paid by e-transfer, or cheque to the mailbox by the laundry room of the residential property.

It was also undisputed by the parties that the mailbox for cheques was not installed by February 1, 2024, though the parties provided conflicting testimony as to the precise date the mailbox was in place. The Landlord's Agents testified this was done on February 5, 2024, the Tenant testified it was after February 7, 2024, and DG testified they saw a technician install the mailbox on February 8, 2024.

Based on the above, I find that the Tenant was not able to fulfil their obligations under section 26 of the Act to pay rent when it was due in a reasonable manner, and the Landlord's change of the established method of rent payment at short notice posed a significant hindrance in paying rent to the Tenant.

I found the testimony of the Tenant's Agent on the subject of the Tenant's inability to make rent payments by e-transfers to be plausible and convincing, and overall, I find that given the circumstances as a whole, the Tenant was left with the only option to pay rent by cheque. Based on the testimonies of both parties, the earliest the mailbox was installed was February 5, 2024, so it was not possible for the Tenant to pay rent on February 1, 2024 given the mailbox was not in place by this time, or indeed when the Notice was issued on February 3, 2024.

Whilst the Landlord is seen in the letter dated January 30, 2024 to remind tenants of the residential property that rent is due on the first day of the month with no exceptions, I find that by requesting cheque payment to a mailbox then not providing said mailbox until February 5, 2024 at the earliest, per the testimony of the Landlord's Agents, I conclude the Landlord is a bad actor in this case.

Given the above, I find the Notice was not given for a valid reason, specifically, the non-payment of rent on the basis that the Landlord placed unreasonable barriers in the way of the Tenant from paying rent when it was due, and by making one of the main methods of rent payment unavailable on February 1, 2024, namely cheque payments, I find the Landlord's conduct prevents them from ending this tenancy for unpaid rent in this case.

I find merit in the arguments of the Tenant's Agent that sliding a cheque under the door of the office was not in the instructions of the Landlord and I find this would not be a secure or reasonable method of paying rent, given there is the real possibility the cheque could be tampered with or accessed by a third party or get lodged under the flooring and appear missing which would cause significant issues. It is possible that the Act does not permit parties to give or serve documents by sliding them under a door for this reason.

I find further reason to cancel the Notice as I find on a balance of probabilities the Tenant paid rent on February 8, 2024, not on February 26, 2024 as alleged by the Landlord's Agents. I found the Tenant's testimony on this matter to be detailed and consistent with their version of events detailed in the description section of their

Application where they are seen to write "I put the rent cheque #88 in the mailbox on Thurs Feb 8".

In contrast, I found the Landlord's Agents testimony on the subject of the date the Tenant paid rent to be self-serving and scant on details. I give greater weight to the Tenant's testimony as a result, and conclude the Notice would have been of no effect under section 46(4)(a) of the Act in any case as the overdue rent was paid within five days of receiving the Notice.

Based on the above, the Tenant's Application for cancellation of the Notice is granted. I order the 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2024 cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

The Landlord's Application is dismissed without leave to reapply and the Landlord must bear the cost of the filing fee as a result. As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee per section 72(2)(a) of the Act.

Conclusion

The Tenant's Application is granted. The tenancy continues until ended in accordance with the Act.

The Landlord's Application is dismissed without leave to reapply.

The Tenant may deduct \$100.00 from a future rent payment in satisfaction of the recovery of the filing fee from the Landlord.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 19, 2024

Residential Tenancy Branch