



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GLR PROPERTIES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, OPR, MNRL, FFL

Introduction

This hearing dealt with the Tenant's July 18, 2024, and the Landlord's July 22, 2024, 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

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 Tenants under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord G.P.L. was served on July 26, 2024, by registered mail in accordance with section 89(1) of the Act. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.
- I find that Tenant M.D. was served on July 22, 2024, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

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 served to the Tenant in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

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

Evidence and testimony provided by the parties indicates that the tenancy began on April 15, 2011, with a monthly rent of \$875.00 due on the first day of each month. The current monthly rent is \$997.80.

Landlord representative M.M. testified that the Tenant was served with a 10 Day Notice on July 5, 2024, by registered mail for unpaid rent in the amount of \$498.68. M.M. testified that the unpaid rent was subsequently paid on July 22, 2024, by cheque. A copy of the notice was submitted as evidence.

Landlord representative M.M. argued that because the Tenant failed to pay the outstanding rent or file for dispute resolution within five days of receipt of the notice, the Landlord is entitled under section 46 of the Act to an Order of Possession.

J.A. testified that her half of the monthly rent is paid to the Landlord by cheque directly from the Ministry of Social Development and that this has been the accepted method of payment for the many years they have lived there and therefore when they received the notice on July 5, 2024, they immediately attempted to call the ministry to find out what had happened to the rental support payment. She testified that she was however unable to reach anyone at the ministry office as it was the end of the day on a Friday afternoon. She testified that she called the ministry office first thing on Monday July 8, 2024, and was advised that a rental payment cheque had been mailed to the Landlord but had not

been cashed. She stated that she gave the ministry representative the Landlord's telephone number so that they could call the Landlord as she had been told that no replacement cheque could be issued until the Landlord was spoken to. She further testified that both the ministry representative and she attempted to contact the Landlord by email and telephone numerous times that day and over the course of the next week and even left messages advising the Landlord of the situation and the need for a call back, but the Landlord did not respond. She stated that a new cheque was eventually issued by the ministry. She stated that they did not file for dispute resolution because they were trying to resolve the situation and a cheque had been issued. Copies of a letter from the Ministry of Social Development to the Landlord confirming issuance of a July 2024 rent cheque on June 19, 2024, in the amount of \$498.80 to the Landlord's mailing address, their attempts to contact the Landlord to reissue the lost or stolen payment and the Landlord representatives refusal to accept the new cheque in-person, screen shots of ministry rental payment transactions including the address to which the cheque was to be sent and a an internal ministry email confirming that the Landlord had not responded to the message left by them but had cashed the new cheque on July 29, 2024, were submitted as evidence.

Analysis

Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

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 testimony of the Tenant and J.A., the Tenant's application for dispute resolution on July 18, 2024, did not make an application within 5 days of service of the notice.

I find however, that customary payment was issued on June 19, 2024, for July 2024 rent and when the Tenant learned that the cheque had for some unknown reason not been received, made immediate and repeated attempts to remedy the situation following receipt of the notice. I find therefore, that the Tenant did not knowingly fail to pay their rent on time but rather than a clerical error or circumstance otherwise outside of the control of the Tenant caused the payment to be delayed.

Furthermore, I find that the Landlord did not attempt to contact the Tenant or J.A. when the standard payment did not arrive so as to ascertain its whereabouts before issuing a notice to end tenancy, and following its issuance, failed to respond to the Tenant and ministry's attempts to resolve the issue to both parties mutual benefit and therefore prevented the Tenant from making the payment within five days of receipt of the notice.

I hereby grant the Tenant's application to cancel the notice of July 5, 2024. 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 Landlord entitled to an Order of Possession based on the Notice?

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 July 5, 2024, 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?

Both parties testified that the amount of outstanding rent for July 2024 was paid and therefore the Landlord's application for a Monetary Order is dismissed without leave to apply.

Is the Landlord entitled to recover the filing fee?

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 Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued July 5, 2024, 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 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: August 21, 2024

Residential Tenancy Branch