# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlord (her mother) served her with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) when a process server handed the tenant the 10 Day Notice on May 23, 2013. The tenant confirmed that the process server also handed her a copy of the landlord's dispute resolution hearing package on July 11, 2013. The tenant also confirmed that she received a copy of the landlord's 17-page written evidence package. I am satisfied that the landlord served the tenant with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Should an adjournment of the landlord's application be granted? Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord's lawyer presented written evidence in which the landlord maintained that the landlord and her daughter (now the tenant) took equal one-half portion ownership positions in this property on November 13, 2008. The landlord's written evidence maintained that this ownership relationship ended by April 19, 2010, by which time the parties entered into a landlord/tenant relationship in which the tenant was to pay the landlord $500.00 for rental of the rental unit. The parties agreed that there was no written residential tenancy agreement in place for this tenancy. The parties also agreed that the landlord has not issued rent receipts during this tenancy.

The landlord provided written evidence that she issued the 10 Day Notice when she did not receive any rent from the tenant for May 2013. She provided written evidence that the tenant paid $375.00 on or about May 29, 2013, but maintained that $125.00 remained owing for May 2013. The landlord applied for a monetary award of $625.00, an amount which included the unpaid rent for May 2013 and unpaid rent of $500.00 owing for June 2013. At the hearing, the landlord confirmed that rent has not been paid for July or August 2013, which increased the amount of her requested monetary award to $1,625.00.

For her part, the tenant testified that she initially held a 99% interest in this rental property. Although she agreed that there was an oral tenancy agreement in place, she could not recall when this arrangement commenced. She testified that she has paid everything owing for this tenancy and has, in fact, overpaid rent during her tenancy.

Analysis

At the hearing, it became apparent that neither party had provided the written evidence that would be necessary to properly consider the landlord's application.

The tenant did not provide any written evidence, claiming that she had not realized until the business day before this hearing that she was allowed to submit written evidence. Although she had no formal receipts for her rent payments, she said that she did have records including a written statement from the landlord in which the landlord allegedly confirmed that her rent was current and that she did not owe the landlord anything.

The landlord's lawyer entered into written evidence a sworn affidavit from the landlord in which among other items, she provided a monthly summary of her banking records regarding this tenancy from January 31, 2012 until May 29, 2013. While she attached a monthly Deposit Account History for the above period, this History appears to have been a printed statement from an on-line search that was not on any letterhead, nor did it show any identifying information as to the financial institution involved for many of the months involved. This document also included many transactions, including deposits, transfers and various bills, which may or may not include a full account of all direct deposit payments or other payments made by the tenant to the landlord over this period. While I could have proceeded to consider the landlord's application for a monetary award after weighing the written evidence submitted by the landlord, I could not grant the Order of Possession sought by the landlord, the principal stated objective of the landlord as expressed by the landlord's counsel without a copy of the landlord's 10 Day Notice. The landlord's counsel said that he believed that the 10 Day Notice was included in the landlord's written evidence package. However, after carefully reviewing

the full contents of the landlord's written evidence package, no copy of the 10 Day Notice was entered into written evidence by the landlord to support this application.

When it became apparent that I could not proceed to consider the landlord's application for an end to this tenancy based on the 10 Day Notice without a copy of that Notice, the landlord's lawyer offered to submit a copy of the 10 Day Notice after the hearing. In doing so, he noted that the tenant had confirmed that she did receive the 10 Day Notice so the existence of that document was not in dispute. As this was the landlord's application for dispute resolution, the landlord was represented by legal counsel and the evidence omitted in the landlord's application involved the key outcome sought by the landlord, I advised that I was unwilling to consider such late evidence that needed to have been submitted in advance of this hearing.

At this point in the hearing, the landlord's lawyer requested an adjournment to allow the parties to provide additional written evidence, including a copy of the 10 Day Notice.

Rule 6 of the Residential Tenancy Branch (RTB) Rules of Procedure establishes how late requests for an adjournment of dispute resolution proceedings are handled. Rule 6.3 allows me at any time during a hearing to adjourn proceedings either on the request of a party or on my own initiative. However, I am required to consider the criteria established in Rule 6.4 of the Rules of Procedure.

In considering the landlord's lawyer's request for an adjournment, I note that the landlord's counsel dated the application he signed on the landlord's behalf June 26, 2013 and applied for dispute resolution on July 8, 2013. The hearing date and time were scheduled on July 10, 2013, over a month in advance of this hearing. Under these circumstances, it appeared to me that the parties had ample opportunity prior to the hearing to present any written evidence they had in their possession, including the 10 Day Notice.

At the hearing, the tenant said that she had intended to submit her own application for dispute resolution with respect to this tenancy, but did not obtain legal advice on her options until the business day before this hearing. She testified that by that time, she was too late to file her own application and to have her application considered at the hearing of the landlord's application. As noted above, she also said that she was unaware that she had the opportunity to submit her own written evidence in the consideration of the landlord's application. At the hearing, I referred the tenant to the first instruction in the "General Information about your responsibility and the hearing" provided on the Notice of a Dispute Resolution Hearing that she received on July 11, 2013. This instruction noted the following:

1. *Evidence to support your position is important and must be given to the other party and the Residential tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

The tenant said that she had not noticed this portion of the Notice of a Dispute Resolution Hearing.

While I have given careful consideration to the request from the landlord's lawyer for an adjournment of the landlord's application, I find that both parties are partially responsible for neglecting to provide written evidence that would be necessary in order to consider their positions. Separate from the key issue of whether this tenancy should continue, the landlord now claimed that the amount of the unpaid rent has escalated from $625,00, the amount cited in the application for dispute resolution to $1,625.00. I can amend an application for dispute resolution to reflect changed circumstances that have arisen as the parties waited for the dispute resolution hearing. However, in this case, July 2013 rent was due when the landlord's counsel submitted the landlord's application for dispute resolution. As there was agreement that the tenant paid some funds to the landlord after having received the 10 Day Notice, I am concerned that my allowance of a considerably increased application for a monetary award to $1,625.00 might impede the tenant's right to know the case against her and to be given a fair opportunity to be heard with respect to the landlord's increased request for a monetary award.

Rule 6.4 also allows me to consider adjournment requests with regard to the primary objective and purpose of Rule 1 of RTB's Rules and Procedures, which is to provide a consistent, efficient and just process for resolving disputes. In this case, I find that both parties have more written evidence to provide that would be critical to considering their positions with respect to this tenancy. While the landlord maintained that more money is owing from this tenancy that may require either an amended application or a new application, the tenant also claimed to have issues that she was hoping to have considered in a cross-application against the landlord.

Under these circumstances, I advised the parties of my finding that they had been given ample opportunity to present written evidence critical to both of their positions prior to this hearing. Their failure to provide this evidence does not entitle them to an adjournment of this hearing for consideration of the landlord's application. For these reasons and after considering Rule 6.4 of the Rules of Procedure, I advised them that I was dismissing the landlord's current application for dispute **with leave to reapply**.

I adopted this course as the tenant was not disputing that she did not apply for dispute resolution to cancel the 10 Day Notice issued on May 23, 2013. Had that 10 Day Notice

been entered into written evidence and if it contained the necessary elements required by the *Act*, the tenant would need to demonstrate that she had complied with the landlord's requirement to pay the amount identified as owing in that Notice in full in order to set aside the 10 Day Notice. She said that she had written evidence to confirm that she has paid all outstanding rent.

As I have made no finding with respect to the merits of the landlord's 10 Day Notice (which was not before me) nor the landlord's application for a monetary award, I find that the most efficient and just process for resolving the issues that the parties wish to have considered by an Arbitrator would be to enable them both to submit new applications for dispute resolution if that is their wish. This would enable an Arbitrator to consider both applications at the same time so as to obtain closure with respect to the issues in dispute.

Conclusion

I dismiss the landlord's application with leave to reapply. As I have made no finding with respect to the merits of the landlord's application or the issues in dispute during this tenancy, I am not seized of this matter, should subsequent applications for dispute resolution be submitted by either party.

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 13, 2013

Residential Tenancy Branch