



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes *OPR, MNR, CNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for:

- An order to cancel the notice to end tenancy for unpaid rent.
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Preliminary Matters

Service of Landlord's Evidence

The tenant had submitted 18 pages of evidence to the file received by Residential Tenancy Branch on February 7, 2014. The landlord confirmed that they also received the tenant's evidence package.

The landlord had submitted 18 pages of evidence to the file as well. The landlord testified that they had served their documentary evidence on the tenant in

person. However, the tenant testified that they did not receive an evidence package from the landlord.

The Residential Tenancy Rules of Procedure, requires that all evidence must be served on the other party.

Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding.

I accept the tenant's testimony that they did not receive the landlord's evidence package. As a result, the landlord's documentary evidence will not be considered in my determination. The landlord is naturally at liberty to provide verbal testimony.

Sever Landlord's Monetary Claims

In regard to the landlord's monetary claim, I find that the Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

The landlord's cross application for Dispute Resolution seeking an Order of Possession and a monetary order, filed on January 9, 2014 indicated that the landlord is claiming rental arrears for rent owed for November 2013, December 2013, which is consistent with the Ten Day Notice to End Tenancy for Unpaid Rent .

However, in the application, the landlord also requested compensation for rent owed for January 2014 and February 2014. I find that, as of the date of the application, the tenant was not actually in arrears for February rent. Moreover, in addition to the tenant's allegation that rent for November and December 2013, had been credited for duties performed, the tenant is also claiming that rent for January 2014 and February 2014 had been paid in full.

In this instance, I find that the landlord's monetary claim was made prior to the date that alleged partial payments were received from the tenant. I also note that the landlord's evidence package was not considered due to the landlord's inability to prove service on the tenant.

Accordingly, I find that the monetary portion of the landlord's application must be severed and all monetary issues may be dealt with separately through an application under section 67 of the Act to give both parties an opportunity to submit accurate evidentiary material about what payments were made.

Therefore the landlord's request for a monetary order is dismissed with leave to reapply.

However, a determination will be made on the remainder of the landlord's application in regard to the Notice to End the tenancy.

Sever Tenant's Monetary Claim

The tenant's application did not include a monetary claim for compensation. However, the tenant had submitted into evidence a detailed accounting of tasks performed on behalf of the landlord, along with the corresponding monetary value of each, for which the tenant is claiming compensation in the form of credit towards the rent owed.

I find that the landlord was not sufficiently notified of the tenant's monetary claim as it was not featured on the application form and the landlord would be prejudiced if an amendment to include and hear the tenant's the monetary claim was allowed..

With respect to the tenant's monetary claim, I find that Residential Tenancy Rules of Procedure, Rule 2.3, applies to this situation.

Because the tenant's claim for compensation must be made under section 67 of the Act, I find that this part of the application is distinct and separate from the tenant's request under section 46 to cancel the 10-Day Notice to End Tenancy for Unpaid Rent .

Accordingly, I find that the monetary portion of the tenant's application, must be severed. I find that the monetary claim must be dealt with separately through an application under section 67 of the Act.

I find that the most pressing matter in the tenant's application is their request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent.

The hearing will proceed only with respect to the portion of the tenant's application pertaining to the request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent.

Issue to be decided: Landlord's Application

- Is the landlord entitled to an order of possession for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for Unpaid Rent?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on July 8, 2013 and the current rent shown in the tenancy agreement is \$800.00 per month payable on the 1st day of each month. The tenant pointed out that they were only paying \$775.00 per month as they agreed that tenant would perform yard maintenance in exchange for a \$25.00 rent reduction. No documentation was submitted to support this and the tenant stated that it was a verbal agreement.

A security deposit of \$400.00 and pet damage deposit of \$400.00 had been paid and these funds are being held in trust by the landlord.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent is in evidence dated December 28, 2013 for rental arrears of \$1,600 for November and December 2013 and terminating the tenancy effective January 7, 2014.

The landlord's application, dated January 9, 2014, contains information alleging that the tenant is in arrears for \$3,200.00 and indicates that rent of \$800.00 is owed for four months including November 2013, December 2013, January 2014 and February 2014. The landlord is seeking a monetary order and an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent.

The tenant acknowledged receiving the 10-Day Notice and freely admitted that they did not pay any rent for November and December 2013. However, the tenant stated that there was a verbal arrangement in which the landlord agreed the tenant could perform various rental and maintenance tasks in exchange for rent. The tenant pointed out that they had submitted evidence of this, including a financial breakdown of the value of the work that they had performed in exchange for the November and December 2013 rents.

The landlord denied that any such arrangement existed.

The tenant pointed out that the landlords did consent to the work-for-rent exchange, but later changed their minds about the agreed-upon arrangement because they were undergoing financial hardship.

The tenant also testified that they paid the rent in full for the months of January and February 2014.

During the hearing the tenant was intent on discussing detailed problems they encountered with the tenancy, including allegations about fraudulent misrepresentation by the landlord. The tenant also complained about not being properly advised by Residential Tenancy Branch staff to add their monetary claim to their application and accused the arbitrator of being biased in favour of the landlord.

Throughout the proceedings the tenant repeatedly engaged in inappropriate conduct that interrupted the testimony of the other party, including accusatory outbursts, threats that she would go to the media and the tenant also used offensive language in addressing the arbitrator. As the hearing drew to a close, the tenant interrupted yet again to demand "*policy information*" and to express her outrage at being unfairly treated. The tenant stated that she would immediately be appealing the decision. The tenant then called the arbitrator a "*f-----g dump truck*" and disconnected from the conference call.

Analysis:

A landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act when rent is in arrears. I find that there is no dispute about the fact that the tenant failed to pay the rent for November and December 2013 and received a Ten Day Notice to End Tenancy for Unpaid Rent on December 28, 2013. I find that the tenant did not pay the arrears in full within 5 days of receiving the 10-Day Notice. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice under the Act. In this instance the debt was not paid.

Therefore, I find that the rental arrears were not paid and the Ten-Day Notice remained in effect. I find that this Notice is supported under the Act and therefore, I find it cannot be cancelled as requested by the tenant.

Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

In regard to the tenant's testimony that, due to an alleged agreement for work in exchange for rent, the tenant was excused from having to pay all of the rent for

November and December 2013, I find that payment of rent is dealt with under section 26 of the Act which states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or a tenancy agreement.

I find that, even if I accept that these parties had entered into a subsequent unwritten contractual agreement in which the tenant would do maintenance, repairs or other labour tasks for the value to be allocated towards rent credits, the precise nature of this subsequent agreement is unclear. Moreover, it is disputed by the landlord and there is no other evidence to support the tenant's testimony.

In any case, regardless of the above, the work arrangement issue is not relevant to the issue at hand, which is the payment of rent under the written tenancy agreement.

I find that I have the authority to enforce the Act and the tenancy agreement. However, while an arbitrator is empowered to determine Residential Tenancy Act matters, this statutory authority does not extend to enforcing ancillary contracts such as the one described by the tenant, that is not strictly a tenancy agreement and grants a tenant financial credit for labour performed.

I find that this work-for-rent contract, even if it does exist as a valid verbal commitment, is considered to be more of an employment relationship that cannot form part of the tenancy. There must be a clear term in the written tenancy agreement that complies with the Act for an arbitrator to make a decision on the matter.

I find that, contracts between parties that entail performance of labour tasks for credit or remuneration are separate from the tenancy agreement and, as such, do not affect the amount of rent paid by the tenant under the Act. I further find that the Residential Tenancy Act does not apply to other peripheral contracts like this.

Accordingly, I find that, I must rely strictly on what is contained in the official written tenancy agreement signed between the two parties. In this regard, I find that the tenant is required to pay \$800.00 rent every month under both the contract and section 26 of the Act.

I have found that the tenant did not pay rent when it was due and that the tenant was genuinely in arrears, thereby justifying the issuing of a Ten Day Notice to End Tenancy for Unpaid Rent.

Based on the testimony and evidence of both parties, I find that the tenancy is validly terminated and the landlord is entitled to an Order of Possession under the Act.

Based on the evidence before me, I hereby issue an Order of Possession in favour of the landlord **effective two days after service on the tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Based on the evidence before me, I hereby dismiss the tenant's application seeking to cancel the Ten Day Notice to End Tenancy for Unpaid Rent without leave to reapply.

I order that monetary claims put forth by both parties are dismissed **with leave to reapply**.

I find that the landlord is entitled to be compensated for the cost of the application in the amount of \$50.00 and I order that the landlord retain this amount from the tenant's security deposit and pet damage deposit leaving \$350.00 security deposit and \$400.00 pet damage deposit still held in trust on behalf of the tenant.

Conclusion

The landlord is partially successful in the cross application and is granted an Order of Possession. The tenant is not successful in the application and the tenant's application is dismissed. The monetary claims of both parties are severed and both are dismissed with 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: February 18, 2014

Residential Tenancy Branch

