



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, LRE, OLC, FFT
OPRM-DR, FFL

Introduction

This hearing dealt with two Applications for Dispute Resolution (the “Applications”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), an order allowing them to change the locks of the rental unit, an order restricting or setting conditions on the Landlord’s right to enter the rental unit, an order for the Landlord to comply with the Act, regulation or tenancy agreement, and recovery of two separate filing fees.

This hearing also dealt with a cross-application filed by the Landlord under the Act seeking an Order of Possession and a Monetary Order for unpaid rent based on the 10 Day Notice as well as recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant and two agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At approximately 9:36 A.M., after being advised that several of his claims would be dismissed with leave to reapply pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), the Tenant became irate, refused to participate in the remainder of the hearing and hung up. Pursuant to section 7.3 of the Rules of Procedure the hearing continued in the absence of the Tenant. Although the line remained open while the hearing continued for an additional 24 minutes, the Tenant did not rejoin the teleconference.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. Although the Tenant initially attended the hearing, he voluntarily left the teleconference before the service of documents and evidence was confirmed. As a result, I confirmed service of the Landlord’s Application, the Notice of Hearing, and copies of the Landlord’s documentary evidence on the Tenant as outlined below.

The Agents testified that on July 27, 2018, the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord were sent to the Tenant at the rental unit by registered mail. In support of this testimony the Agents provided the registered mail receipt and tracking number in the documentary evidence before me.

With the consent of the parties present I logged into the mail service provider’s website and verified that the registered mail was sent as described above and that it was picked up and signed for by the Tenant on July 31, 2018.

As a result of the above, I find that the Tenant was therefore served with the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord on July 31, 2018; the date he picked up and signed for registered mail. In any event, I am satisfied that the Tenant was aware of the date and time of the hearing as he appeared in the hearing as scheduled prior to voluntarily exiting the conference call before the end of the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be e-mailed to them at the e-mail address confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the name for the Landlord was different on the Landlord’s Application than both of the Tenant’s Applications. I confirmed the correct spelling of the Landlord’s name and amended the Applications and the Residential Tenancy Branch (the “Branch”) records accordingly.

Preliminary Matter #2

In the hearing the Tenant testified that although he stopped residing in the rental unit on approximately August 31, 2018, he still has possessions in the rental unit. As a result of the above, I determined that possession of the rental unit was still at issue despite the fact that the Tenant now stays elsewhere.

In his Applications the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 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.

As stated above, I have already found that possession of the rental unit is still at issue. As the Tenant applied to cancel a 10 Day Notice and the Landlord applied for an Order of Possession and a Monetary Order for unpaid rent based on the 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end and the payment of rent. As the Tenant's claims for an order allowing them to change the locks of the rental unit, an order restricting or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement are unrelated to the 10 Day Notice, I therefore exercised my discretion to dismiss the Tenant's claims for an order allowing them to change the locks of the rental unit, an order restricting or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement with leave to reapply.

Based on the above, the hearing proceeded based only on the Tenant's Application seeking cancellation of the 10 Day Notice, the Landlord's Application seeking an Order of Possession and a Monetary Order for unpaid rent based on the 10 Day Notice, and both parties' requests for recovery of the filing fee.

Preliminary Matter #3

The Agents testified that since filing the Application, the amount of outstanding rent has increased as the Tenant now also owes rent for August and September, 2018. Rule 4.2 of the Rules of Procedure states that an Application may be amended in the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the date the Application was filed. The Application was

therefore amended pursuant to the *Act* and the Rules of Procedure to reflect that the Landlord is seeking outstanding rent for July, August, and September of 2018.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If the Tenant is unsuccessful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to compensation for unpaid rent pursuant to section 67 of the *Act*?

Is either party entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed-term tenancy, which commenced February 1, 2018, is set to end on January 31, 2018, and that rent in the amount of \$1,388.00, plus a separate \$60.00 parking fee is due on the first day of each month.

The Agents testified that when the Tenant did not pay the \$1,388.00 required for July rent on July 1, 2018, a 10 Day Notice was served. The 10 Day Notice in the documentary evidence before me, dated July 12, 2018, has an effective vacancy date of July 25, 2018, and states that as of July 1, 2018, the Tenant owed \$1,448.00. The Agents testified that the 10 Day Notice was posted to the door of the rental unit on July 12, 2018, and submitted a witnessed and signed proof of service document confirming that the 10 Day Notice was served as outlined above. Prior to exiting the conference call, the Tenant confirmed that he received the 10 Day Notice from the door of his rental unit the following day on July 13, 2018.

Prior to the Tenant exiting the conference call, the parties confirmed that the Tenant stopped residing in the rental unit on approximately August 31, 2018, but that some of the Tenants possessions still remain in the rental unit. The Agents testified that as of the date of the hearing, the Tenant has not paid any rent for July, August, or September of 2018.

As a result, the Agents requested authorization to withhold the Tenant's \$694.00 security deposit towards the outstanding rent and a Monetary Order for the balance remaining. Although the Agents requested a decision finding that the 10 Day Notice is valid, they stated that an Order of Possession is not required as they have already received and served an Order of Possession effective August 31, 2018, on the Tenant as a result of a different hearing with the Branch.

As the Tenant voluntarily exited the hearing at 9:36 A.M. due to his desire not to participate any further, no testimony or documentary evidence was present by the Tenant for my consideration in relation to the payment or non-payment of rent for July, August, or September of 2018.

Analysis

Based on the testimony provided in the hearing and the documentary evidence before me for consideration, I find that the Tenant was served with the 10 Day Notice on July 13, 2018, the date he acknowledged receipt in the hearing. Section 46 of the *Act* states that within five (5) days after receiving a 10 Day Notice, a tenant must pay the overdue rent or dispute the notice by making an application for dispute resolution or they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I accept the undisputed testimony of the Agents that the Tenant did not pay the outstanding rent within five days after receiving the 10 Day Notice. Although the Tenant filed an Application seeking cancellation of the 10 Day Notice on July 19, 2018, based on his testimony that the 10 Day Notice was received by him on July 13, 2018, I find that the Tenant had only until July 18, 2018, to file his Application in compliance with section 46(4) of the *Act*. As he did not file his Application until July 19, 2018, I find that he filed his Application late. As he did not apply for an extension of the time period in which to file the Application, I find that he did not file his Application in compliance with the *Act* and is therefore conclusively presumed, pursuant to section 46(5) of the *Act*, to have accepted the 10 Day Notice and the end of the tenancy. As a result, the Tenant's Application seeking cancellation of the 10 Day Notice is dismissed without leave to reapply.

In any event, although the Tenant initially appeared at the outset of the hearing, he refused to participate and voluntarily exited the conference call only six minutes after the start of the hearing. Section 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may dismiss the application with or

without leave to reapply. As a result, even if I had not found above that the Tenant is conclusively presumed to have accepted the 10 Day Notice, as the the Tenant refused to participate in the hearing of his own Application, I would have dismissed his Application without leave to reapply based on his failure to fully attend or participate in the hearing.

I find that the 10 Day Notice complies with section 52 of the Act and based on the above, I therefore find that the 10 Day Notice is valid. However, as the Agents stated that they no longer require an Order of Possession, I have not issued one.

Based on the undisputed testimony of the Agents, I also find that the Tenant has not paid any rent for July, August, or September of 2018. Based on the tenancy agreement, I find that the Tenant owes \$1,388.00 per month in unpaid rent for July and August of 2018. However, as the Agents stated that they received and served an Order of Possession for the rental unit effective August 31, 2018, I find that the tenancy ended on August 31, 2018, and that the Landlord is therefore not entitled to full rent for September, 2018, as of today's date. Instead I find that the Landlord is entitled to daily rent for the Tenant's overholding of the rental unit from September 1, 2018, - September 14, 2018, the date of this hearing. As rent is \$1,388.00 per month, I therefore find that the Tenant owes \$591.78 in rent for September 1, 2018, - September 14, 2018; \$42.27 per day (\$1,388.00 divided by 30 days). The Landlord remains at liberty to file another application seeking compensation for any additional days of overholding or loss of rent, should they wish to do so.

As the Landlord was successful in their Application, I find that they are entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As the Tenant's Application was dismissed without leave to reapply, I find that he must bear the cost of his own filing fee. Pursuant to section 72 of the *Act*, the Landlord is also entitled to retain, in full, the \$694.00 security deposit paid by the Tenant in partial recovery of the above owed amounts. As a result, the Landlord is entitled to a Monetary Order in the amount of \$2,773.78; \$3,467.78 owed by the Tenant for unpaid rent and recovery of the filing fee, less the \$694.00 security deposit retained by the Landlord.

Conclusion

The Tenant's Application seeking cancellation of the 10 Day Notice and recovery of the filing fee is dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,773.78. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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.

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: September 14, 2018

Residential Tenancy Branch