



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL (Landlord)
 CNR-MT, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their application September 21, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued August 30, 2021 (the “August Notice”)
- To recover the filing fee

The Tenant filed their application September 28, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued September 10, 2021 (the “September Notice”)
- For more time to dispute the September Notice
- To recover the filing fee

The Landlord’s Application proceeded by way of the direct request process and a decision, Order of Possession and Monetary Order were issued to the Landlord October 26, 2021. The Tenant sought a review of the original decision and was granted a review in a review decision issued November 02, 2021. The review hearing was crossed with the Tenant’s Application.

The Agent for the Landlord (the “Agent”) attended the hearing. The Tenant attended the hearing.

The Agent confirmed the correct name of the Landlord which is reflected in the style of cause. The Landlord is the owner of the rental unit.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages, review decision and evidence.

The Agent testified that they received the hearing package for the Tenant’s Application from the RTB in December of 2021. The Agent took issue with service of the hearing package. I found there was no issue with service of the hearing package because the Landlord received it more than one month prior to the hearing.

The Agent confirmed receipt of the Tenant’s evidence other than personal health information dated July 21, 2021 and August 12, 2021.

The Agent testified that they received a document named “RTB_Chronology_and_Evidence_Bundle_-_Applicant.pdf” (“RTB Chronology”) from the Tenant by email on the morning of the hearing.

The Tenant testified that they did not serve their personal health information on the Landlord because the contents are personal and the information is privileged under regulations relating to the pandemic. The Tenant did not provide the applicable regulations.

I found the Tenant failed to comply with rule 3.14 of the Rules in relation to service of the personal health information. I heard the parties on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Agent stated they did not receive the personal health information. The Tenant stated that the evidence should be admitted and that it is relevant to the issues before me.

Pursuant to rule 3.17 of the Rules, I exclude the personal health information because I find it would be unfair to consider it when the Landlord had not seen it and could not

respond to it at the hearing. I acknowledge that the information is personal to the Tenant; however, rule 3.14 of the Rules required the Tenant to serve it on the Landlord if they wished to rely on it at the hearing. The Tenant did not provide regulations that take precedence over rule 3.14 of the Rules in these proceedings. In the circumstances, I find it would be prejudicial to admit the evidence.

In relation to the RTB Chronology, the Tenant testified that it was submitted and served the day of the hearing because this was the quickest they could complete it. The Tenant testified that it took a long time to complete the RTB Chronology. The Tenant stated that they did their best in relation to submitting and serving the RTB Chronology.

I found the Tenant failed to comply with rule 3.14 of the Rules in relation to submitting and serving the RTB Chronology. I heard the parties on whether the RTB Chronology should be admitted or excluded pursuant to rule 3.17 of the Rules. The Agent stated that the RTB Chronology should be excluded because they expect the Tenant to follow the Rules. The Agent said they did not have time to look at the RTB Chronology before the hearing. The Tenant submitted that the RTB Chronology should be admitted because it is a chronological table of events, is truthful and is accurate.

Pursuant to rule 3.17 of the Rules, I excluded the RTB Chronology. The Tenant was required pursuant to rule 3.14 of the Rules to submit and serve their evidence not less than 14 days before the hearing. The Tenant submitted and served the RTB Chronology on the morning of the hearing, well past the 14-day deadline. The RTB Chronology had not yet been submitted when I prepared for the hearing. I accept that the Agent did not have time to review the RTB Chronology prior to the hearing because it is 39 pages long, contains a substantial amount of information and was only served on the morning of the hearing. The Tenant filed their application September 28, 2021 and had more than four months to submit and serve their evidence. I do not find it reasonable that the Tenant submitted and served the RTB Chronology on the date of the hearing in the circumstances. I found it would be unfair to the Landlord for me to consider the RTB Chronology when the Agent did not have time to review it and could not address it at the hearing.

The Tenant confirmed receipt of the hearing package for the Landlord's Application. The Tenant confirmed receipt of the Landlord's evidence and did not raise an issue with service when asked.

The Agent confirmed the Landlord received a copy of the review decision and that they were aware we were dealing with the review hearing on the hearing date.

I asked the parties if there were any other service issues. The Tenant asked that I reconsider my decision in relation to the RTB Chronology. I told the Tenant I would not reconsider my decision.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note the following in relation to the Tenant during the hearing. Rule 6.10 of the Rules states:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I told the parties at the outset of the hearing that they were not to interrupt each other and were to note down if they disagreed with or wanted to reply to something the other party was saying and to raise it when I asked for their position. The Tenant interrupted the Agent during the hearing and was told again not to do so. The Tenant continued to interrupt the Agent during the hearing by making comments about what the Agent was saying in their testimony. I had to tell the Tenant for a third time not to interrupt the Agent. Further, the Tenant continually interrupted me when I was trying to explain issues to the Tenant or telling the Tenant not to interrupt the Agent and explaining the consequences of doing so further. I told the Tenant pursuant to rule 6.10 of the Rules that I would put them on mute if they continued to be disruptive.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the August Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

3. Should the Tenant be given more time to dispute the September Notice?
4. Should the September Notice be cancelled?
5. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2020 and was for a fixed term ending September 30, 2021. Rent is \$1,750.00 per month due on the first day of each month.

The August Notice was submitted. The August Notice states that the Tenant failed to pay \$1,750.00 in rent due August 01, 2021.

The Agent confirmed the Notice was issued because the Tenant did not pay August rent.

The parties agreed the August Notice was served on the Tenant in person August 30, 2021.

The Agent testified that the next rent payment received after the August Notice was issued was \$3,500.00 for August and September rent on September 14, 2021.

The Agent testified that the Tenant did not dispute the August Notice.

The Tenant agreed they did not pay August rent by August 01, 2021.

The Tenant testified that the next rent payment made after the August Notice was issued was on September 13, 2021 and included a \$2,500.00 payment and \$1,000.00 payment for August and September rent.

The Tenant took the position that they did dispute the August Notice in the Tenant's Application. I asked the Tenant to point to where in their application they mention the August Notice or that they are disputing it. The Tenant could not point to where in their application it mentions the August Notice and submitted that it is obvious they are disputing the August Notice as well as the September Notice.

The Agent submitted that it is not obvious in the Tenant's Application that they are disputing the August Notice.

The Tenant did not raise an issue with the form or content of the August Notice when asked.

The Tenant did not submit that they had authority under the *Act* to withhold August rent.

The Tenant testified that they are disputing the August Notice because rent was paid late due to medical issues, mental health issues, a death in their family, the global health crisis and them suffering from an injury due to an accident.

The Agent testified that there was \$3,500.00 in rent outstanding as of the hearing date. The Tenant denied this. The Agent acknowledged it is possible the Tenant has made payments that they are not aware of and said they would check this with their office.

The Agent sought an Order of Possession effective February 28, 2022.

Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date...

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

Section 66 of the *Act* addresses extending timelines and states:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:

- (a) the extension is agreed to by the landlord;
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I accept that rent is \$1,750.00 per month due on the first day of each month based on the written tenancy agreement and testimony of the parties.

I accept that the Tenant had not paid August rent when the August Notice was issued based on the testimony of the parties. I find the Tenant did not have authority under the *Act* to withhold rent based on the testimony of the Tenant. I find the Tenant was required to pay \$1,700.00 by August 01, 2021 for August rent pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant did not pay August rent as required, the Landlord was entitled to issue the August Notice pursuant to section 46(1) of the *Act*.

I find the August Notice was served on, and received by, the Tenant on August 30, 2021 based on the testimony of the parties.

I have reviewed the August Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the August Notice on August 30, 2021 to pay the outstanding rent or dispute the August Notice pursuant to section 46(4) of the *Act*.

Whether the next rent payment made was September 13th or 14th is not relevant as both dates are well past the deadline of September 04, 2021. I acknowledge that the Tenant provided reasons for not being able to pay rent earlier; however, I cannot extend the deadline for paying the rent as stated in section 66(2) of the *Act*.

I find the Tenant did not dispute the August Notice. I have reviewed the Tenant's Application which is the only dispute filed with the RTB that is before me. The Tenant's Application specifically states that they are disputing the September Notice. The description of the application does not refer to more than one 10 Day Notice or the August Notice. The 10 Day Notice submitted by the Tenant with the Tenant's Application is the September Notice. The Tenant was not able to point to where in the Tenant's Application it shows they are disputing both the August Notice and September Notice. I do not agree that it is obvious the Tenant is disputing the August Notice and September Notice because one would expect there to be some mention of the August Notice in the Tenant's Application if the Tenant was disputing it, particularly given it was received prior to the September Notice.

Given the Tenant did not pay the outstanding rent or dispute the August Notice by September 04, 2021, section 46(5) of the *Act* applies. The Tenant is conclusively presumed to have accepted the August Notice and was required to vacate the rental unit by September 09, 2021, the effective date of the August Notice.

Even if I had accepted that the Tenant disputed the August Notice September 28, 2021 when the Tenant's Application was filed, pursuant to section 66(3) of the *Act*, I could not grant the Tenant an extension of time to dispute the August Notice past September 09, 2021, the effective date of the August Notice.

Given the above, the Landlord is entitled to an Order of Possession effective at 1:00 p.m. on February 28, 2022 pursuant to the August Notice and section 55(2) of the *Act*.

It is not necessary to consider the September Notice given the tenancy ended September 09, 2021 pursuant to the August Notice.

I decline to issue the Landlord a Monetary Order for unpaid rent because I am not satisfied there is rent outstanding given the testimony of the parties.

The Landlord is entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act* because they were successful on their application.

Given the above, the Tenant's Application is dismissed without leave to re-apply. The original decision on the Landlord's Application is upheld in the result; however, the original Order of Possession is set aside and the Landlord is issued an Order of

Possession effective at 1:00 p.m. on February 28, 2022. The original Monetary Order is valid and upheld.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The original Order of Possession is set aside and the Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The original Monetary Order is valid and upheld. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 08, 2022

Residential Tenancy Branch