



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, MNDCT, LRE, LAT, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 31;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented at the hearing by his counsel/agent NH. Landlord’s counsel acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence, however stated that she understood the evidence was sent in relation to another hearing set for March 28, 2023. The file numbers for that future hearing are recorded on the cover page of this decision. I advised the tenant that if counsel referred to any piece of evidence and the tenant does not have it, then the tenant should interrupt counsel’s submissions to let me know. The tenant advised she understood and agreed.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the

offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party confirmed that they were not recording the hearing.

Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notices to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. At the commencement of the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of one aspect of the tenant's application:

- The parties mutually agree to end this tenancy. This tenancy will end at 1:00 p.m. on March 31, 2023 by which time the tenant and any other occupant will have vacated the rental unit.
- The rights and obligations of the parties continue until the tenancy ends, which includes the tenant's obligation to pay rent for February and March 2023.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles this aspect of the dispute. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to this aspect of the application before me.

Issue(s) to be Decided

The parties agree that September's rent was paid on September 9, 2022. The parties seek a determination about whether the tenant was obligated to pay rent for the period from October 1, 2022 through January 31, 2023.

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. Since moving in, the landlord has been harassing her. After the first month of moving in, the harassment began. The landlord began to make up reasons for the tenant to leave which she disputed. When the landlord served the tenant with a notice to end tenancy, the landlord offered a cash buyout. The conditions were for a return of all rent paid, reimbursement for damages, for data lost due to the internet being cut and both moving in and moving out expenses. Additionally, the tenant sought payment for stress due to the tenant's temper. The tenant submits that the landlord agreed to the terms and a sum of \$10,000.00 was agreed upon. The tenant drew my attention to the emails she submitted into evidence from the landlord's lawyer and her responses.

The tenant went to the landlord's lawyer's office to sign the agreement and the landlord made changes to the agreement which the tenant did not agree to. It was after a long negotiation that the landlord agreed that the tenant did not have to pay rent for October and November and she would leave by the end of November. The tenant acknowledges she never signed the written agreement when it came time to sign it since there was no firm agreement as to the terms. In the lawyer's office she determined it would be best to let the arbitrator decide if she needs to pay.

The tenant testified that the landlord also permitted her to not pay rent for the month of December and directed my attention to a recording of negotiations with the landlord ([Voice 5 124841.mp3](#)) as proof.

Landlord's counsel gave the following submissions. There was no agreement between the parties that the tenant was not required to pay rent for the months of October, November, December or January. The parties tried negotiating a settlement in an attempt to avoid the arbitration set for today however the terms of the agreement were

never decided by the parties. The tenant refused to sign the written agreement presented and the negotiations failed.

The parties are still bound by the tenancy and the tenancy continues under the terms of the tenancy agreement until the tenancy ends. There is no agreement that rent doesn't have to be paid. The landlord disputes the tenant's allegations of harassment and disputes that the settlement offer was to compensate her for harassment. Counsel acknowledges tension between the parties for issues that a landlord has the right to discuss with the tenant, such as leaving lights on and leaving the windows open while the heat is on. Utilities are included in the rent and the landlord has to pay for the tenant's wasteful use of them.

Analysis

The tenant relies on the terms of settlement that the landlord's counsel was negotiating with her in order to justify not paying rent for the period of October 1 to January 31.

Black's Law Dictionary (sixth edition) provides definitions of negotiation and agreement:

Negotiation is the process of submission and consideration of offers until acceptance offer is made and accepted.

Agreement is a meeting of two or more minds; a coming together in accord of two minds on a given proposition... The act of two or more persons, who unite in expressing a mutual and common purpose, with the view to altering their rights and obligations.

I have reviewed the email exchanges between the tenant and the landlord's counsel and I find the parties were negotiating terms upon which the tenant would vacate the rental unit for the end of November. In exchange, the landlord offered a cash settlement as well as a waiver to collect rent for October and November. The tenant did not agree to the term that the landlord's counsel undertook to hold the cash settlement until after the tenant had vacated the rental unit.

Clearly, the tenant testified that she did not agree to the terms of settlement as offered by the landlord's counsel. As she did not agree to the terms proposed, the tenant cannot rely upon them to her benefit after refusing them during negotiations. Significantly, the agreement required that the tenant vacate the rental unit by the end of November 2022 which the tenant did not do. Consequently, I find the parties were not bound by an agreement whereby the landlord waived the requirement to pay rent for October and November 2022.

As requested by the tenant, I reviewed the audio document ([Voice 5 124841.mp3](#)) to substantiate her claim that the landlord waived payment of rent for December, 2022. I do not find the landlord ever uttered such a waiver.

Neither party presented a tenancy agreement, however based on the evidence before me, I find that the parties are bound by an implied tenancy agreement with rent set at \$1,200.00 payable on the first day of each month. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I do not find the tenant had any right to deduct rent. I find the tenant failed to pay rent for the period from October 1, 2022 to January 31, 2023 (4 months) in breach of section 26 of the Act. Pursuant to section 67 of the Act, the landlord is entitled to a monetary order in the amount of \$4,800.00.

The tenant's application was not successful. The filing fee will not be recovered.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on March 31, 2023 should the landlord be required to do so.

I award the landlord a monetary order in the amount of \$4,800.00.

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: January 27, 2023

Residential Tenancy Branch