



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, DRI, RR, LRE, LAT, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on January 27, 2023 (the “10-Day Notice”);
- an order pursuant to s. 43 disputing a rent increase;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 70 restricting the Landlord’s right of entry;
- an order pursuant to s. 70 for authorization to change the locks to the rental unit;
- return of the filing fee pursuant to s. 72.

J.R. appeared as the Tenant. G.D.R. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Tenants’ Claims

The Tenants seek wide ranging relief in their application. Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another and permits me the ability to sever unrelated claims from an application.

In this instance, the primary issue is whether the tenancy will continue or end based on the enforceability of the 10-Day Notice. Indeed, some of the relief sought by the Tenants would not be relevant should the tenancy come to an end as the issues they present would be moot.

I find that the Tenants’ claims under ss. 65 (rent reduction), 70 (restricting landlord’s entry), and 70 (authorization to change the locks) of the *Act* are not sufficiently related to the question of unpaid rent. Pursuant to Rule 2.3 of the Rules of Procedure, they are severed from the application.

Irrespective of the outcome of the hearing, the Tenants’ claim for a past rent reduction under s. 65 of the *Act* is dismissed with leave to reapply. Depending on whether the tenancy continues or not, the Tenants’ claims under ss. 65 (future rent reduction), 70 (restricting landlord’s entry), and 70 (authorization to change the locks) of the *Act* are dismissed either with or without leave to reapply.

The hearing proceeded strictly on the issue of the disputed rent increase and the question of unpaid rent tied to the enforceability of the 10-Day Notice.

Issues to be Decided

- 1) Was the rent increase properly imposed?
- 2) Is the 10-Day Notice enforceable?
- 3) If so, is the Landlord entitled to an order of possession and order for unpaid rent?
- 4) Are the Tenants entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on February 1, 2017.
- Rent of \$867.00 is due on the first of each month.
- The Tenants paid a security deposit of \$400.00 to the Landlord.

The parties advise that prior to January 1, 2023 rent had been due each month in the amount of \$850.00. According to the Landlord, his former realtor personally served the Tenant with a notice of rent increase on September 27th or 28th of 2022. The Tenant denies being personally served with the notice of rent increase and says that he discovered the notice of rent increase in an email from the Landlord. The Tenant says that email is not an approved form of service between the parties and says he found the notice of rent increase sometime after being served with the 10-Day Notice.

The Tenant does not dispute the \$17.00 increase. I am told by the parties that the Tenant has paid the increased amount and that there are currently no arrears on rent. However, the parties agree that the Tenant paid \$850.00 in rent for January 2023, with the Landlord's evidence showing this was paid on December 21, 2022. January's rent did not include the rent increase. The shortfall of \$17.00 prompted the Landlord to serve the 10-Day Notice, though the notice lists failure to pay \$867.00 on January 1, 2023. I am told by the Landlord that the Tenant paid the \$17.00 shortfall on April 5, 2023.

The Tenant spoke to a level of confusion of why he was served with the 10-Day Notice, directed me to an email he sent to the Landlord on January 31, 2023 asking for clarification on why it had been served, and that there was some clerical issue with respect to payment of the \$17.00 for January 2023. I am told by the Tenant that the Landlord did not respond to the Tenant's email of January 31, 2023 in which he sought clarification on why he was served with the 10-Day Notice.

Part 3 of the *Act* sets establishes the allowable rent increase and the process by which rent increases are to be imposed. There is no dispute between the parties with respect to the increase of \$17.00, which I note is the amount permitted under the *Act* and Regulations. Further, the Tenant is not truly disputing the rent increase and has begun to make payment of \$867.00. The only reason why the Tenant has disputed the rent increase in this application is due to the Landlord serving the 10-Day Notice.

Section 42 of the *Act* sets out the timing and notice for rent increases, specifying that a landlord must give a tenant notice of the rent increase at least three months before the effective date of the increase and the notice itself must be in the approved form.

Whether the increase was properly imposed in these circumstances turns on whether the notice of rent increase was properly served. Section 88 of the *Act* sets out the general methods of service. Personal service is set out under s. 88(a) of the *Act*. Service via email is permitted under s. 88(j) of the *Act* provided a party provides a copy of their email as an address for service beforehand as per s. 43 of the Regulation. I have not been directed to any document showing that email is an approved form of service between the parties. I accept that it was not.

To support that the notice of rent increase was personally served, the Landlord directs me to text messages with his former realtor and a voicemail from the same individual. The Tenant emphasizes that the Landlord failed to provide a copy of form RTB-43 with respect to digital evidence, did not provide a proof of service form, and did not call the realtor as a witness.

Though I accept the Rules of Procedure require a party who submits digital evidence to prepare and serve form RTB-43 to describe the evidence, I am also cognizant that dispute proceedings before the Residential Tenancy Branch are to be conducted in a manner that is less formal than what might be expected in court. Participants before the Residential Tenancy Branch are generally self-represented lay people. A flexible approach with respect to the Rules is sometimes appropriate considering the process and participants at the Residential Tenancy Branch, which in my view is in keeping with the object of the Rules of Procedure as set out in Rule 2.1 provided the process remains fair.

The digital evidence provided by the Landlord is not so voluminous or lengthy such that it would be a challenge for the Tenant to review prior to the hearing. Nor is it particularly challenging to ascertain why the Landlord submitted it as evidence. It is one audio recording that is less than a minute long. In other words, I do not find it would be a breach of fairness to consider the audio recording provided to me by the Landlord despite the lack of RTB-43.

I have reviewed the audio recording from the individual, who the Landlord tells me is his former realtor, saying that he served the Tenant with a Notice to End Tenancy and a notice of rent increase. The recording is undated though the text messages referred to include a screenshot of an audio recording from September 27, 2022, which presumably relates to the recording provided by the Landlord.

Though the Landlord's evidence suggests that the notice of rent increase was personally served on or about September 27, 2022, I am not satisfied that it the Landlord demonstrated service in accordance with the *Act* on that date. The Landlord could have submitted a signed proof of service or called the realtor as a witness. He did not. The evidence I do have from the Landlord is unaffirmed from a third party to the dispute. In the face of this unaffirmed evidence, I have the Tenant's clear testimony on the record that he was not personally served on September 27, 2022.

It appears more likely than not that the Tenant was not served with the notice of rent increase in September 2022. I found the Tenant to be forthright in his answers at the hearing. He has voluntarily paid \$867.00 despite the issues of not being properly served with the notice of rent increase. He paid his rent for January 2023, doing so early. The Landlord himself admitted at the hearing that the Tenant was generally good on paying rent on time. I find that had the Tenant been served with the notice of rent increase as mentioned by the Landlord, the Tenant would have very likely paid the increased amount. Indeed, he has done so after receiving the 10-Day Notice, despite not having been properly served with the notice of rent increase.

It is also telling, in my view, that the Landlord did not respond to the Tenant's question in the email of January 31, 2023. By way of some context, I am advised by the parties that the Tenant successfully disputed a Two-Month Notice to End Tenancy sometime in early January 2023. Had the Landlord responded to the Tenant's query, I accept that the Tenant would have likely paid the \$17.00 shortfall such that the 10-Day Notice would have been automatically cancelled under s. 46(4) of the *Act*. I suspect that the Landlord did not do so as he would like for the tenancy to end and only issued the 10-Day Notice, rather than send a reminder, after the Two-Month Notice to End Tenancy was cancelled. Indeed, evidence provided to me shows the Landlord had previously sent courtesy reminders in the past.

I find that the notice of rent increase was not served on the Tenant on September 27th or 28th of 2022. I find that the Tenant was not in arrears of rent when the 10-Day Notice was served as the Tenant was not properly notified of the \$17.00 increase. The parties confirm that the Tenant paid \$850.00 in rent on December 21, 2022, before it was due on January 1st. Accordingly, I find that the 10-Day Notice was not properly issued as rent had already been paid. I find that the 10-Day Notice is of no force or effect and is hereby cancelled. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The Landlord did not properly serve the notice of rent increase such that it was not in effect on January 1, 2023.

The 10-Day Notice was improperly issued as rent had been paid at that time. It is hereby cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

Those aspects severed under Rule 2.3 of the Rules of Procedure are dismissed with leave to reapply.

As the Tenants were successful in their application, I find they are entitled to their filing fee. Pursuant to s. 72(1) of the *Act*, I order the Landlord pay the Tenants' filing fee. I direct pursuant to s. 72(2) that the Tenants withhold \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of their filing fee.

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: April 25, 2023

Residential Tenancy Branch