



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), dated November 29, 2022. The matter was set for a conference call.

Two Landlords (the “Landlord”) attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*. The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issues to be Decided

- Should the Notice dated November 29, 2022, be cancelled?
- If not, is the Landlord entitled to an Order of Possession and a monetary order for unpaid rent?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

This hearing was scheduled to commence at 11:00 a.m. on April 13, 2023. I called into the teleconference at 11:00 a.m.; the line remained open while the phone system was monitored for 38 minutes, and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 11:38 a.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

The Landlord testified that their rental property is a house, that rents out several rooms to different renters, who all have shared access to the bathroom and kitchen on the property. The Landlord testified that this Tenant J.M. shares a room with another Renter (Renter A). The two Landlords present at these proceedings, disagreed if Tenant J.M. and Renter A were partners.

The Landlord testified that this tenancy started in either September or October 2021, as a verbal month-to-month tenancy, with a monthly rent of \$500.00 per month. The Landlord testified that the provincial ministry makes the rent payments for Tenant J.M., usually a few days before the beginning of the month. The Landlord testified that no written tenancy agreement had been created for this tenancy. The Landlord submitted a provincial ministry Shelter Information document and four email conversations between the Landlord and the provincial ministry into documentary evidence.

The Landlord testified that the rent for this tenancy has been paid by the provincial ministry between September or October 2021, through September 2022, but that no payment was received for October 2022.

The Landlord testified that they served the 10-Day Notice to Tenant J.M. on November 29, 2022, in person at the rental unit. The 10-Day Notice recorded an effective date of December 11, 2022, and an outstanding rent amount of \$1,000.00. The Landlord testified that the outstanding rent amount of \$1,000.00 indicated on the Notice was for October and November 2022 rent.

The Landlord also testified that they did receive a payment of \$500.00 for Tenant J.M. on October 27, 2022, from the provincial ministry, and that this payment was for the November 2022 rent, as rent payments were normally received early. However, the Landlord confirmed that they applied that payment to the outstanding rent for October 2022.

The Landlord was asked to speak to why they had recorded an outstanding rent amount of \$1,000.00, on the Notice when they did receive a rent payment from the provincial ministry on October 27, 2022, that was applied to the October 2022 rent. The Landlord testified that they had issued a refund to Tenant J.M. in the amount of \$500.00 and that they had added that refund to the Notice as the Tenant did not move out. The Landlord agreed that this amount should not have been included on this 10-day notice for non-payment of rent, and verbally amended the Notice to \$500.0 outstanding for November 2022 during these proceedings.

The Landlord testified that as of the date of these proceedings, the Tenant had not paid the full outstanding rent for November 2022 as indicated on the Notice to end tenancy, and that no rent had been paid for December 2022, or January, February, March, and April 2023, for a total amount due of \$2,500.00. The Landlord is requesting that the Notice be enforced and that an order of possession and a monetary order for the unpaid rent be issued.

The Landlord also testified that they had issued a different 10-day notice to this Renter A, who resides in the same unit as Tenant J.M., and that Renter A had also disputed that notice, and that the hearing for that notice was taking place at the same time as these proceedings, with the Residential Tenancy Branch.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's testimony that this Tenant J.M. shares a room with Renter A in the Landlord's rental property and that the rental property houses several renters, who all have shared access to the bathroom and kitchen on the property.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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 [form and content of notice to end tenancy].*

(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.

I accept the Landlord's testimony, and I find that the Tenant received the 10-Day notice on November 29, 2022, by the personal service of the Landlord to the Tenant at the rental unit. I have reviewed the Tenant's application and I find that they did apply to dispute the Notice on December 5, 2022, within the legislated timeline.

However, as stated above, the Tenant failed to attend these proceedings and I have therefore dismissed their application to dispute the Notice to end tenancy.

The Landlord's request for an order of possession and a monetary order for unpaid rent; however, pursuant to rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires a landlord to prove sufficient cause to terminate the tenancy for the reasons given on the Notice. Therefore, I am still required to review the Landlord's testimony and documentary evidence before I am able to determine if an order of possession and a monetary order is warranted in this case.

I accept the Landlord's testimony supported by their documentary evidence, specifically, the Shelter Information document, that rent payments of \$500.00 per month for this tenancy were being made by the provincial ministry, that payment started in September 2021 and continued uninterrupted until September 2022, when the first payment was missed, for October 2022.

Additionally, I have also reviewed the four-email conversation between the Landlord and the provincial ministry, submitted into evidence by the Landlord, and I noted that in these conversations it was recorded by the ministry official that the Landlord had also been collecting \$500.00 a month rent payment from Renter A, for a total rent of \$1,000.00 per month for this shared room in the Landlord's rental property.

After a careful review of the Shelter Information document, which I find to be a significant piece of evidence as it is a government form signed by the Landlord, I noted that the Landlord had declared on this form, that the charge for this unit if shared, would be \$575.00 per month. As the Landlord has testified that Tenant J.M. and Renter A, shared this unit, I find that the rent of this shared unit ought to have been \$575.00, as declared by the Landlord on this Shelter Information document that I have before me in these proceedings. This makes the rent for these Tenant J.M. and Renter A, \$287.50 each per month, not the \$500.00 each, as collected by the Landlord.

As the Landlord has been collecting \$500.00 a month each for Tenant J.M. and Renter A, to share the same unit, I find that the Landlord has received \$1,000.00 a month in rent payments from the provincial ministry for two people to occupy this shared unit, in which the Landlord, declared themselves on this form, that a shared unit rent should have only been \$575.00 a month.

Consequently, I find that the Landlord had been overpaid \$5,950.00 in rent for this shared room, consisting of \$425.00 a month for 14 months, between September 2021

to October 2022. Therefore, at the time this Notice was issued, on November 29, 2022, there was no rent outstanding for this tenancy as the Landlord was holding a large overpayment.

As I have determined that no rent was outstanding for this tenancy when this notice was issued, I find that this Notice is not valid, and the Landlord is not entitled to an Order of Possession or a Monetary Order for this tenancy. Ultimately, I find that the Notice dated November 29, 2022, is of no force or effect.

I acknowledge that at the end of these proceedings, I had verbally indicated to the Landlord that based on their verbal testimony I would be issuing an order of possession and a monetary order for this tenancy. However, after I stepped away from the hearing and reviewed the documents submitted into evidence by the Landlord, I could not overlook the inconsistency in the testimony provided by the Landlord and the documents that I have before me. Therefore, I find it appropriate to amend my verbal decision in this written and final decision for these proceedings.

Conclusion

The Tenant's Application is dismissed.

I find that the Notice dated November 29, 2022, is of no force or effect, as there was no rent outstanding at the time this Notice was issued.

This tenancy will continue until legally ended in accordance with the *Act*.

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 18, 2023

Residential Tenancy Branch