



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GLR Propertied Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) pursuant to section 46;
2. an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
3. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

JS, (the “tenant”) appeared at the hearing with AC appearing as their witness. CR and MM appeared as agent for the corporate landlord. JE appeared at the hearing and identified themselves as a witness for the landlord, but when called to testify, JE indicated that their intention was only to listen in on the hearing.

The tenant testified that they served the landlord with the Notice of Dispute Resolution Proceeding and supporting evidence at the address listed on the 10-Day Notice by sending the documents by registered mail on January 17, 2023.

MM testified that they served the tenant with their supporting documents and evidence by registered mail on March 10, 2023. In support of this MM provided a Canada Post Tracking Number.

MM testified that they served a further two pages of evidence on the tenant by posting a copy to the door of the rental unit on March 13, 2023. In support of this, MM provided a Proof of Service indicating the same and a photograph of documents posted to a door.

While the parties disagreed about many of the details of service, both parties attended the hearing and neither party took issue with their ability to review or respond to the other parties' submissions and evidence. As a result, I find based on section 71(2) of the Act that the parties were sufficiently served with each others' application materials and evidence.

All parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. All parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The tenant listed MM as the landlord on their Application for Dispute Resolution. However, during the hearing the parties confirmed the current landlord is the corporate landlord. Based on the parties' confirmation and based on section 64(3)(c) of the Act, I have amended the corporate landlord's name on the tenant's application.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 10-Day Notice?
2. If the tenant is not entitled to an order cancelling the 10-Day Notice, is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties agreed that the tenancy commenced on September 1, 2020. CR testified that monthly rent increased on January 1, 2023, and that rent is currently \$1,397.66 a month payable on the first day of the month. CR testified that rent increases are given to tenant's annually and are sent out 3 to 3.5 months prior to the effective date of the rent increase which is January 1st.

The tenant agreed that he receives a rent increase every year; however, the tenant testified that they were not aware of the rent increase and did not receive notice of a

rent increase. The tenant indicated that he consents to a rent increase and is now aware that rent is \$1,397.66 per month.

The parties agreed that the tenant paid the landlord a security deposit of \$675.00, which the landlord continues to hold in trust for the tenant.

MM testified that they served the 10-Day Notice on the tenant by sending a copy of the 10-Day Notice by registered mail on January 10, 2023. In support of this, MM provided a Canada Post Tracking Number. The tenant acknowledged receipt of the 10-Day Notice but was unable to confirm the date the 10-Day Notice was received.

CR testified that the landlord issued the Notice because the tenant had an outstanding balance of unpaid rent in the amount of \$1,322.91. CR further testified that when the tenant paid rent in January 2023 the payment was short \$27.41. CR testified that the majority of outstanding balance is the result of the tenant having failed to pay rent in August 2022. CR testified that while he discussed a re-payment plan of the August 2022 rent, with the tenant and the tenant made a number of offers to pay the outstanding August 2022 rent, none of the offers were accepted, and no terms were agreed upon.

CR testified that since the January 2023 Notice was issued, the tenant has not paid rent for the months of February and April and that while the tenant paid rent in March, the payment was short by \$27.41.

CR noted that their evidence indicates the tenant's balance owing was \$1,397.91; however, this includes \$75.00 in late fees which is not included in the amount listed on the 10-Day Notice of January 2023.

CR submitted that the landlord is seeking an Order of Possession and Monetary Order in the amount of \$4,220.64 in unpaid rent.

The tenant testified that they had Covid for approximately 6 weeks from approximately the third week of July 2022 through August 2022. The tenant stated that they were very ill and did not realize that they had not paid rent for August 2022.

The tenant submitted that they made an agreement with CR to pay the rent back over 6 months. The tenant testified that he told CR he would pay \$995.00 immediately and that he would like 6 months to pay back the outstanding balance. The tenant testified that CR agreed to allow him to pay back the remainder of the outstanding balance over a

period of 6 months, and the tenant asked for the agreement in writing, but he never received it. The tenant made a payment in the amount of \$995.00 on December 1st, 2022.

The tenant testified that he has made efforts to contact the landlord but has been unable to reach them. The tenant alleged that the landlord has blocked their number.

AC appeared as the tenant's witness and stated the tenant was extremely sick with Covid for approximately 6 weeks between July and August 2022. AC testified that they were present when the tenant called CR to make a payment plan and that they are aware that CR agreed to the payment plan and that was the end of what the tenant heard from CR.

AC who is also a tenant of the corporate landlord testified that they have not received a rent increase for January 2023.

Analysis

Based on the testimony of the parties and based on section 89 and 90 of the Act, I find that the 10-Day Notice was served on the tenant by registered mail on January 10, 2023, and is deemed to have been received by the tenant on January 15, 2023, the fifth day after it was sent by registered mail.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10-Day Notice as the landlord has done in this case.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In most circumstances the onus is on the person making the application. However, in some situations the Arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the above, in this case, the onus is on the landlord to prove on a balance of probabilities that the tenancy should be ended for the reason identified on the 10-Day Notice.

CR's evidence is that they issued the 10-Day Notice because the tenant had an outstanding balance, the majority of which was the result of the tenant's failure to pay rent in August 2022. CR further testified that when the tenant paid rent in January 2023 the payment was short \$27.41. CR drew my attention to the statement included at page 4 of their evidence. It is evident to me from the Statement, that the \$27.41 CR is referring to is the amount of the rent increase which CR asserts was effective January 1, 2023.

The consistent evidence between the parties is that the tenant failed to pay rent in August 2022. However, since that time the statement shows that the landlord has accepted rent from the tenant for the months of September, October, November, December 2022 and January 2023. Further, the landlord accepted a lump sum payment from the tenant on December 1st, 2022, in the amount of \$995.00 which the tenant asserts was based on an agreement to pay back the outstanding balance over a period of six months. I find based on the actions of the landlord of continuing to accept rent and accepting the lump sum payment that the landlord is estopped from enforcing the 10 Day Notice of January 2023.

Estoppel is the legal doctrine best articulated in the *Central London Property Trust Ltd v. High Trees House Ltd* [1947] KB 130 where Lord Denning explained that, "A promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on." In the case before me, I find that the tenant relied on the landlord's good faith to accept rent for August 2022 through a series of payments. I find the tenant's testimony to be consistent, detailed and supported by a credible witness.

CR asserts that the tenant's January 2023 rent payment was short \$27.41 which I have determined is the amount of the rent increase. The parties disagree as to whether or not the tenant was aware of the increase; however, I find that the onus is upon the landlord to establish that the tenant was notified of the rent increase.

The landlord has not provided any documentary evidence to support that a Notice of Rent Increase was issued to the tenant. To the contrary, both the tenant and AC testified that they did not receive a Notice of Rent Increase for January 2023. On that basis, I find the landlord has not met the evidentiary burden which is upon them to prove on a balance of probabilities that the tenant was provided notice of the rent increase.

Given that I am not satisfied that the tenant was not aware of the rent increase, I do not accept that the tenant can be penalized for not paying \$27.41 in January 2023.

Ultimately, I find the landlord has not met the onus which is upon them to prove the reason that the tenancy should be ended. The reason indicated on the Notice is not valid and, on that basis, I find in favour of the tenant and order that the 10-Day Notice is cancelled.

The tenant requested an order requiring the landlord to provide them with emergency contact information. Section 62(3) of the Act authorizes the Director to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. However, there is nothing in the Act, Regulation or Tenancy Agreement that requires a landlord to provide a tenant with emergency contact information. On that basis, I find that I have no authority to grant an order requiring the landlord to provide the tenant with emergency contact information. The tenant's application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act is dismissed without leave to reapply.

As the tenant was partially successful in their application, I find that they are entitled to recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the tenant may withhold \$100 from **ONE** future payment of rent.

Conclusion

For the reasons outlined above, I grant the tenant's application for cancellation of the 10-Day Notice. The tenancy will continue until such time as it is 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 25, 2023

Residential Tenancy Branch