



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, FFT, OPR, MNRL-S, FFL, MNDCT, LRE, OLC, FFT**

Introduction

This hearing dealt with cross-applications under the Residential Tenancy Act (the Act)

The Tenant in one application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order suspending or setting conditions on the landlords right to enter the rental unit or site
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

And another application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The Landlord Applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Preliminary Matters

Rule of Procedure 2.3 states that claims must be related to each other. Due to time constraints, only the claims related to the 10 Day Notice and payment of rent were heard. The following claims are dismissed with leave to reapply:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order suspending or setting conditions on the landlords right to enter the rental unit or site

The landlord was reminded the Act restricts the landlord's right to enter the rental unit and they must comply with the requirements in section 29.

Issue(s) to be Decided

1. Should the 10 Day Notice be cancelled?
2. Is the landlord entitled to an Order of Possession based on the 10 Day Notice?
3. Is either party entitled to their filing fee?

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Both parties were duly served with the Dispute Resolution Proceeding notices.

Background and Evidence

I will refer only to what I find relevant for my decision.

The Tenancy began on January 1, 2021, monthly rent is \$1700.00. The Tenancy Agreement states that payment must be made by cheque or money order. A security deposit in the amount of \$850.00 and Pet Deposit in the amount of \$850.00 was made.

On August 3, 2023 a 10 Day Notice of Eviction was placed on the Tenant's door. It is uncontested that the Notice had an error on it, in which the Landlord indicated it was signed on August 13, 2023.

It is uncontested that rent payments historically were made in cash with no receipt provided. It is uncontested that the tenant occasionally paid the Landlord's mother.

The Tenant testified that they paid the Landlord's mother on August 5, 2023, at the Landlord's residence. The Tenant testified that he did not identify himself or provide explanation of the unit he was paying rent for. The Tenant testified under affirmation that bank statements would show cash withdrawn in the amount of the rent around the time of the payment, the bank statements were not provided.

The Landlord disputed that rent was paid on August 5, 2023. He asked his mother and she reported it did not occur; he also checked his counters and places where a payment would have been placed and none was located. The Landlord submits that historically the Tenant would text when dropping off payments, however no such text was sent on August 5, 2023.

The Tenant submits that while historically he had texted the Landlord about rent payments, he and the Landlord had ceased communication prior to August 5, 2023; therefore, no text was sent.

The Landlord questioned why the Tenant would not request a receipt when a 10 day notice had been served. The Tenant advised that it was not offered.

It is uncontested that the Tenant has paid rent for September and October.

Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch

I find that the 10 Day Notice was served to the tenant on August 3, 2023, and that the tenant had until August 13, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The matter that needs to be determined is if an August rent payment was made on August 5, 2023. It is undisputed that the rent payment was historically paid in cash with no receipt provided. Given that both parties provided equally plausible accounts of events or circumstances related to the August payment, the onus is on the Landlord to tip the balance of probabilities in their favour. The Landlord acknowledged that they did

not provide receipts for cash thus the Landlord cannot rely on the absence of the receipt to establish that no rent was paid. On a balance of probabilities, I conclude that the tenant provided payment on August 5, 2023.

The 10 Day Notice of August 3, 2023, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Are either party entitled to recover the filing fee for this application from the landlord?

As the tenant was successful in their application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. This may be recovered from the rent payment for November 1, 2023.

Conclusion

The tenant's application is granted for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act.

The 10 Day notice of August 3, 2023, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

The Tenant is to recover the filing in the amount of **\$100.00 from their November 2023 rent payment** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the landlord under section 72 of the Act	\$100.00
Total Amount	\$100.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 12, 2023

Residential Tenancy Branch