



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

OPC

OPB

MNSD

MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated February 16, 2009, purporting to be effective March 29, 2009 and the One-Month Notice to End Tenancy for Cause dated February 3, 2009, purporting to be effective on March 6, 2009.

This hearing also dealt with a cross application submitted on February 27, 2009 by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated February 11, 2009, purporting to be effective March 29, 2009. At the outset, the landlord indicated that on March 17, 2009, an added amendment to the original application of February 27, 2009 had also been filed and served on the tenant. The landlord had decided to add a request for monetary compensation from the tenant in the amount of \$1,185.00 for unpaid rent and projected loss of rent.

Prior to both the current application filed on February 27, 2009 and the amendment filed on March 17, 2009, an earlier application for dispute resolution had been filed by the landlord on February 19, 2009. However this application had been withdrawn before a hearing was held.

Preliminary Matters

Tenant's Request for More Time to File Dispute

The tenant's application indicated that the tenant was making a request to be allowed more time to make an application to cancel a Notice to End Tenancy. The Act specifies that a tenant must file to dispute a Notice to End Tenancy for Cause issued under section 47, within 10 days of receiving the Notice or it will be conclusively presumed that the tenant agreed to vacate. In this instance, the Notice to End Tenancy for Cause was received by the tenant on February 16, 2009 and the tenant filed to dispute the Notice on February 18, 2009. Therefore, the tenant filed within the required time frame under the Act and an extension is not needed.

Landlord's Amended Application to Add Monetary Claim

The landlord indicated that on March 17, 2009, it had submitted an added amendment to the original application of February 27, 2009 which was subsequently filed and served on the tenant. The Application that was filed on February 27, 2009 indicated that the landlord was seeking an Order of Possession based on a Notice to End Tenancy for Cause issued on February 11, 2009 under section 47 of the Act. The later amendment submitted by the landlord was for monetary compensation for rental arrears and loss of rent in the amount of \$1,185.00 under section 67 of the Act. Evidence submitted by the landlord included an application form dated and signed on March 17, 2009 showing a claim for \$1,185.00. The landlord testified that this amended application was served on the tenant, both in person and by registered mail. The landlord later furnished a copy of the amended application along with a "Proof of Service" document

dated March 17, 2009 attesting that “*an amended application for dispute resolution*” was served on the tenant by posting it on the tenant’s door on “*March 3, 2009*” at 3:00 p.m.

Section 89 of the Act requires that an application for dispute resolution, be given to one party by another, must be given in one of the following ways:

(a) **by leaving a copy with the person;**

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) **by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;**

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(my emphasis)

In situations where the application by a landlord relates only to an Order of Possession (e.g. section 55), then the application can also be served, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant, or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

In this instance, the amendment deals with a monetary claim which legally requires service to be given in person or by registered mail. The landlord is required to prove that the amendment was properly served to the tenant as defined by the Act. I find that the “Proof of Service” document submitted by the landlord into evidence verified that the amended application was posted on the door on March 3, 2009 instead of being served in person or by registered mail. I note that the date this allegedly occurred conflicted with the fact that the landlord’s amendment to the February 27, 2009 application was

not even signed until March 17, 2009. In any case, posting an application on the door is not permitted under the Act. I find that the landlord did not submit a registered mail receipt or tracking number into evidence, and I also note that, during the proceeding, the tenant denied being personally served. The landlord produced a letter sent to the tenant dated March 18, 2009, which the tenant disputed receiving, stating that an earlier application by the landlord had been cancelled and that an amended application had been filed and hearing scheduled. However, even if accepted, this correspondence would not qualify as proof of service of the amended application on the tenant.

Based on the evidence and testimony, I find that the landlord has not sufficiently proven service of the amended portion of the application containing the request for monetary compensation, adjoined with the request for an Order of Possession. Therefore the landlord's monetary claims will not be heard nor considered during these proceedings. and the portion of the landlord's application relating to the request for rent owed is dismissed with leave.

I also make a finding of fact that the tenant was therefore never officially apprised of a monetary claim being made by the landlord on any of the Notices issued nor the Application(s) before me.

Multiple Notices to End Tenancy for Cause Issued on Different Dates

The landlord's application indicated that it was seeking an Order of Possession based on the Notice to End Tenancy for Cause dated February 11, 2009 and this document was included in the landlord's evidence. However, the Tenant's application was seeking to cancel a Notice to End Tenancy for Cause dated February 16, 2009 and also a Notice issued on February 3, 2009. Copies of these additional two notices were included in the tenant's evidence. The landlord's issuing of multiple Notices to End Tenancy caused some confusion during the hearing and I find it necessary to consider all of these Notices to End Tenancy for Cause, (section 47), for the purpose of the two applications before me, including the Notices issued on February 3, 11, and 16, 2009,

being that each Notice was evidently issued based on the same fact situation under dispute.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notices to End Tenancy for Cause was warranted or whether these notices should be cancelled as requested by the Tenant. This requires a determination of whether:
 - the tenant was repeatedly late paying rent;
 - the tenant or a person permitted on the residential property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
 - the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - has caused or is likely to cause damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act.

Background and Evidence

Submitted into evidence were copies of several One-Month Notices to End Tenancy for Cause, an unsigned copy of a tenancy agreement, communications from the landlord to the tenant, a copy of the rental ledger showing the record of rental payments, correspondence to the landlord from other residents, a photo appearing to show wall damage, written testimony from the tenant and copies of information relating to the tenant's financial circumstances. The landlord testified that the tenant has engaged in unacceptable conduct and has repeatedly paid the rent late which prompted the landlord to issue a Notice to end Tenancy for Cause. The landlord wants the tenancy ended and is seeking an immediate Order of Possession.

The tenant testified that the landlord has issued the Notices to end Tenancy without any valid basis. The tenant did acknowledge that the rent was paid late on numerous occasions but explained that this was due to dire personal circumstances. The tenant testified that, otherwise, he was a good tenant in every respect. The tenant stated that he was hopeful of preserving this tenancy until the end of June at which time he agreed to vacate voluntarily.

Analysis

In regards to the issue of repeated late payment of rent, I find that the testimony and evidence of both parties confirm that this had transpired numerous times in the recent past. Section 26 of the Act specifically requires that 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. Under section 47, repeated late payment of rent is a valid basis upon which the landlord may end the tenancy for cause.

Accordingly, I find that the One-Month Notices to End Tenancy for Cause issued by this landlord to be valid and justified under the Act and as such, I am not able to grant the tenant's request to cancel the Notices to End Tenancy for Cause.

Given the above, I find I must grant the landlord's request for an order of possession based on the One Month Notices to End Tenancy for Cause.

Conclusion

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application and order that this amount be retained from the security deposit being held on behalf of the tenant, the remainder of which should be refunded in accordance with the provisions under section 38 of the Act.

The tenant's application is dismissed in its entirety without leave to reapply.

April 2009

Date of Decision

Dispute Resolution Officer