



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, MNDC, OLC, RR, OPC, MND, MNDC, FF

Introduction

This hearing was scheduled to hear cross-applications. The tenant made an application on October 16, 2009 to request more time to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for Cause; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; and, to allow the tenant to reduce rent. The landlord made an application on October 21, 2009 for an Order of Possession for cause; for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and to retain the tenant's security deposit, and to recover the filing fee from the tenant. Both parties appeared at the hearing and were provided the opportunity to be heard, to respond to the other party's submissions and to ask questions. The tenant was assisted by a mental health advocate.

During the introduction to the dispute resolution proceeding, the landlord interrupted the proceeding to object to the tenant's application being heard on the basis that the tenant did not dispute the Notice to End Tenancy within the required amount of time. I explained to the landlord that the application had been accepted and that it was upon me to make a decision on the tenant's application but that I first needed to hear from the parties in order to determine whether the tenant's application should be heard or dismissed.

Issues(s) to be Decided

1. Did the landlord serve a valid and enforceable Notice to End Tenancy upon the tenant?
2. Has either party established an entitlement to monetary compensation from the other party?
3. Has the tenant established an entitlement to Order for compliance or a rent reduction?
4. Award of the filing fee.

Background and Evidence

I heard undisputed testimony from both parties that the parties entered into a tenancy agreement between 5 and 6 years ago. The landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause* (the Notice) on September 26, 2009. In the space provided on the approved form for the tenant's name the landlord incorrectly identified the tenant by misspelling her first name and using a different last name.

The landlord was of the position that the incorrect identity of the tenant on the Notice should not be a reason to cancel the Notice as no other tenant occupies the rental unit. The tenant was of the position the landlord wanted to end the tenancy so that he could use the rental unit for his own use and the landlord's allegations are largely false. The tenant was willing to end the tenancy December 31, 2009 as she needed more time to find accommodation that would accept her pet. I also heard that the landlord is currently residing in a travel trailer in the driveway of the residential property. An attempt to facilitate a mutual agreement to end tenancy effective December 31, 2009 was made several times; however, the landlord was unwilling to agree to end the tenancy effective December 31, 2009.

I refused to review the landlord's evidence concerning the reasons for ending the tenancy as I found the Notice incorrectly identified the tenant and the Notice was not enforceable against the tenant. As the Notice to End Tenancy was found to be invalid it was not necessary to deal with the tenant's request for cancellation of the Notice or more time to make the request for cancellation.

The tenant did not make any verbal submissions with respect to any other issues related to compliance, rent reduction or monetary compensation despite being provided the opportunity during the hearing.

In concluding the hearing, the landlord stated that he would pursue an early end to tenancy. The landlord also stated the tenant had not paid rent for November. The rights and obligations of parties with respect to issuance of a 10 Day Notice to End Tenancy for Unpaid Rent and an application for early end to tenancy were briefly outlined during the hearing; however, both parties were informed that further information may be obtained by contacting the Residential Tenancy Branch.

Analysis

Dispute resolution proceedings are based on the principals of natural justice. A fundamental principal of natural justice requires that a party seeking to take action against another party, properly identify the parties involved. In issuing a Notice to End

Tenancy, a landlord must issue a Notice that is in the approved form. The approved forms for all Notices to End Tenancy require the landlord to identify the tenant using the first and last names of the tenant. The requirement to use a tenant's full name is consistent with the principals of natural justice as outlined above. In this case, the landlord misspelled the tenant's first name and the landlord used a last name of the tenant that is different than the tenant's actual last name. I rejected the landlord's position that the Notice should be upheld because there is no other tenant in the rental unit for if it were only necessary to identify the rental unit and not the tenant, the approved form would not require the tenant's name be provided.

In light of the above, I find the incorrect first and last name of the tenant on the Notice issued September 26, 2009 is a significant error on part of the landlord and the Notice is invalid and of no effect on the tenant. Therefore, I set the Notice aside, I refuse the landlord's request for an Order of Possession based on that Notice, and I find that the tenancy shall continue until such time it legally ends.

I also deny the landlord's request for monetary compensation as the landlord did not establish that he issued a valid Notice to End Tenancy upon the tenant and that the tenant was responsible for the landlord incurring a loss. Although the tenant disputed the Notice more than 10 days after it was served upon her, ultimately, the Notice was found to be invalid and the tenant cannot be held responsible for the landlord's error in issuing an invalid Notice.

As the landlord was unsuccessful in this application, I do not award the filing fee to the landlord and the landlord's application has been dismissed in its entirety.

The tenant did not provide sufficient testimony or evidence in support of reducing future rent payments or an entitlement for compensation from the landlord. Therefore, I also dismissed the tenant's application.

Conclusion

The Notice to End Tenancy for Cause was found to be invalid and unenforceable with the effect that this tenancy continues. Applications filed by both parties were dismissed.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

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: November 06, 2009.

Dispute Resolution Officer