



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, OPR, CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Ten-Day Notice to End Tenancy dated November 1, 2010. In addition, the landlord was seeking a monetary order for rental arrears. The hearing also dealt with an application by the tenant to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent issued on November 1, 2010 and a request that the landlord be ordered to comply with the Act.

Both parties appeared and each gave testimony.

Issue(s) to be Decided

The issues to be determined for the landlord's application, based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the Ten-Day Notice

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and unpaid rent

The issues to be determined for the tenant's application, based on the testimony and the evidence are:

Whether or not the Ten-Day Notice to End Tenancy for Unpaid Rent dated November 5, 2009 should be cancelled.

Whether or not the landlord should be ordered to comply with the Act

The burden of proof was on the landlord to establish that the Ten-Day Notice was validly issued and to verify that the amounts being claimed were genuinely owed. The tenant had the burden to prove an order forcing the landlord to comply with the Act was warranted.

Background and Evidence

The tenancy began in December 2008 and a security deposit of \$500.00 was paid. The landlord testified that the tenant failed to pay \$1,000.00 rent for November 2010 due on November 1, 2010 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued on November 1, 2010 but served to the tenant on November 2, 2010.

The landlord was seeking a monetary order for rent owed and an order of possession based on the Notice.

The landlord also provided testimony and evidence regarding concerns about the conduct of the tenant. However, the landlord had not issued a One-Month Notice for Cause to end the tenancy on this basis. The landlord stated that the landlord and his family were afraid for their safety in regards to this tenant.

The tenant acknowledged that \$1,000.00 rent was not paid for November and admitted that he did not presently have the funds for the rent owed. The tenant stated that he is in the process of looking for another place to live, but could not provide an anticipated date that he would be ending this tenancy. The tenant wanted the Ten-Day Notice to be cancelled.

The tenant was also seeking an order that the landlord comply with the Act by ceasing his harassment of the tenant. The tenant stated that the landlord had been verbally aggressive and repeatedly appeared at the tenant's door. In addition, the tenant stated that the power to his stove had been turned off for 2 weeks.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement.

Through testimony from both parties it was established that the tenant did not pay the rent for November when it was due or since that time. When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 52 of the Act states that in order to be effective, a notice to end a tenancy must be in writing and must (a) be signed and dated by the landlord or tenant giving the

notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

In situations where the ending of a tenancy has been made *effective* on a date that does not comply with the legislation, section 53 of the Act deems the *effective date* of the notice to be automatically changed to the earliest compliant date under the Act. However, in regards to the date the Notice was *signed* by the landlord, neither the Act nor the Residential Tenancy Rules of Procedure give a dispute resolution officer the authority to retro-actively correct the signature date on the Notice.

In this instance, although the Notice was not served until November 2, 2010, I find that the Notice had erroneously indicated that the tenant was in rental arrears as of November 1, 2010 when in fact, at the time the notice was signed, the tenant was not yet in arrears. Therefore, I find that, although the tenant does owe \$1,000.00 rent for November, the Notice dated November 1, 2010 is not enforceable because of the date it was signed. The tenancy cannot be ended on this Notice and it is therefore cancelled.

Based on the evidence, however, I find that the tenant currently owes rent to the landlord in the amount of \$1,000.00 and the landlord is therefore validly entitled to a monetary order for this amount. The remainder of the landlord's application is dismissed without leave.

In light of the above, the portion of the tenant's application requesting that the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled has been rendered moot and this matter need not be pursued.

In regards to the landlord's stated fear of the tenant and additional concerns about violations of the Act and tenancy agreement, I find that these matters are not germane to the issue before me at the present time. However, the landlord is at liberty to pursue another application under sections 46, 47 or 56(1) of the Act should he wish to do so.

The remaining issue in the tenant's application was the request for an Order that the landlord comply with the Act. In light of the allegations by each party about verbal aggression on the part of the other, I find it necessary to issue an order that the parties refrain from personal contact and communicate with each other only in written form except if it is a genuine emergency.

Conclusion

Based on the above, I hereby grant the landlord a monetary order in the amount of \$1,050.00 comprised of \$1,000.00 rent owed for the month of November and the \$50.00 cost of the application.

The tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is moot as the Notice was found not to be enforceable on its face.

I grant the tenant's application that the landlord be ordered to comply with the Act, through an order that each party is required to restrict communication to written form.

The remainder of both the tenant's and the landlord's applications are dismissed without leave to reapply.

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 2010.

Dispute Resolution Officer