



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both parties attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

During the course of the hearing it was determined that the tenant received a notice to end tenancy for unpaid rent, not a notice to end tenancy for cause. The application is hereby amended to include an application for an order cancelling a notice to end tenancy for unpaid rent.

All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent?
Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began in mid-December, 2009, and the tenant still resides in the rental unit. The rental unit is one room in the basement of the landlord's house. Rent in the amount of \$375.00 per month is payable in advance on the 1st day of each month. The landlord did not collect a security deposit or a pet damage deposit from the tenant.

The landlord testified that at the end of October, 2010 she served the tenant with a 1 Month Notice to End Tenancy for Cause. In mid-November, 2010 the tenant yelled profanities to the landlord up the stairs threatening to burn the house down.

She further testified that the tenant was to move by the end of November, 2010, but he didn't so she told him he would have to move by the end of December.

On January 1, 2011 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She stated that rent was paid for the month of October, 2010, however when she received rent from the Ministry for the tenant at the end of October, 2010 to cover November's rent, she sent it back to the Ministry. She received no rent for December, 2010 or for January, 2011. She stated that she wants the tenant to move out due to issues with the tenancy, and that she wants to use the space herself.

The tenant testified that he did not receive a 1 Month Notice to End Tenancy for Cause. He received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in October, 2010 and another on January 2 or 3, 2011. He further stated that the landlord had accused him of stealing tires and left notes to that effect, which is why he lost his temper and yelled profanities at the landlord.

The tenant further testified that the last notice to end the tenancy received by him states that rent in the amount of \$1,125.00 that was due January 1, 2011 had not been paid, is dated January 1, 2011 and contains an expected date of vacancy of January 10, 2011. Neither party has provided a copy of any notice to end the tenancy. He further testified that he offered the landlord a form to complete which would ensure that the Ministry paid the rental arrears that now amount to \$1,125.00. The tenant wants to move from the rental unit, and as soon as he or his advocate can find another accommodation, he will move.

Analysis

The landlord is entitled to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after rent is due and remains unpaid. The tenant then has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, it is conclusively presumed that the tenant has accepted that the tenancy ends on the effective date of the notice. However, the *Residential Tenancy Act* also requires that the landlord mitigate any loss. By sending rent cheques back to the Ministry, the landlord has caused the rent to remain unpaid, and the landlord is therefore not entitled to an Order of Possession.

If the landlord wishes to use the space for her own home, the landlord may, under the *Act*, issue a Notice to End Tenancy for Landlord's Use. If that form is issued, it must be issued before the end of a month, and then the tenant would be permitted to remain in the rental unit for the following two months, and must be given the equivalent of one month of rent, by either not charging for the last month, or by giving the tenant a month of rent back. If the tenant decides to move before the 2 months has passed, the tenant must give the landlord 10 days written notice and must pay rent proportionally. If the tenant has already paid the rent when he gives the 10 days written notice, the landlord must refund rent proportionally. To calculate that proportion of rent, I find in the circumstances that in a month that has 30 days, the rent is \$12.50 per day. In a month that has 31 days, rent is \$12.10 per day. Further, if the tenant chooses to leave earlier than the effective date of the Notice to End Tenancy for Landlord's Use, the landlord is still required to give the tenant the equivalent of one month's rent.

The tenant did not lead any evidence with respect to his application for a monetary order. Since it may very well have been an oversight, and I did not question the tenant about that portion of his application, I dismiss that portion of the application with leave to reapply.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for cause is hereby dismissed.

The tenant's application for an order cancelling a notice to end tenancy for unpaid rent is hereby allowed and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby cancelled.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with 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: January 17, 2011.

Residential Tenancy Branch