



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNC, MNR, MNDC, MT, OLC, LRE, LAT, RR, SS, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlords filed an Application requesting an order of possession for unpaid rent, a monetary order for unpaid rent, for compensation under the Act and tenancy agreement, and to recover the filing fee for the Application.

The Tenant applied for more time to make an Application to cancel a Notice to End Tenancy, to cancel a Notice to End Tenancy for cause, for money owed or compensation under the Act or tenancy agreement, for orders for the Landlord to comply with the Act or tenancy agreement, to suspend or set conditions on the Landlord's right to enter the rental unit, to authorize the Tenant to change the locks, to allow the Tenant to reduce rent for repairs or services for facilities agreed upon but not provided, to serve documents in a different way than required under the Act, for other relief, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the main issue of this dispute was whether or not the tenancy was going to continue, based on a 10 day Notice to End Tenancy for unpaid rent. The Tenant has filed for numerous other issues, unrelated to this main issue. I explained at the outset of the hearing that those unrelated issues were dismissed with leave to reapply. Pursuant to section 2.3 of the rules of procedure, I dismiss the unrelated portions of the Tenant's Application, with leave to reapply.

It was clarified at the beginning of the hearing that the Tenant intended on disputing the 10 day Notice to End Tenancy for unpaid rent, although he indicated on his Application he was disputing a Notice to End Tenancy for cause. Therefore, I allow the Tenant to amend his Application to cancel the 10 day Notice to End Tenancy.

I also note that this was a highly contentious hearing, with both parties needing to be cautioned several times for interruptive or inappropriate behaviour. Due to this behaviour, I muted both parties' phone lines on two occasions, once in order to provide instructions to the parties and then to explain my decision and orders.

Issue(s) to be Decided

Is the 10 day Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

This tenancy began on March 1, 2011, with the parties entering into a standard term tenancy agreement, on a month to month basis. The monthly rent was set at \$850.00 and the Tenant paid the Landlords a security deposit of \$425.00.

On June 1st or 2nd 2011, the Tenant gave the Landlords a cheque for the June rent in the amount of \$850.00. This cheque was not honoured by the bank because a stop payment had been put on it by the Tenant.

The Landlord has submitted a copy of this cheque which is stamped "item dishonoured", and a copy of a stop payment form made by the Tenant.

The Landlord supplied a copy of an email from the Tenant dated June 3, 2011, indicating the Tenant was going to arbitration with the Branch as he felt he was not getting services for which he had paid for. The Tenant explained in the email the Landlords would be paid rent by the tenancy branch.

The Tenant testified during the hearing that he put the stop payment on the cheque because the Landlord demanded payment of the rent in cash.

On June 14, 2011, the Tenant sent a second email to the Landlords informing them he was told by the Branch to pay the rent. He informs the Landlords in this email he has put the rent in a mail slot at a business owned by the Landlords. Apparently the payments were made via bank money order.

The Tenant testified and submitted evidence that he paid the Landlords with two bank issued money orders, each in the amount of \$425.00. One of the money orders was dated June 3, 2011, and the second was dated June 13, 2011.

The Landlords testified that they did not receive these money orders.

The Tenant testified that the Landlords said they would throw away the money orders.

On June 15, 2011, the Landlords issued a 10 day Notice to End Tenancy for unpaid June rent, with an effective date to end the tenancy of June 24, 2011 (the "Notice"). The Landlords posted the Notice to the rental unit door. Under the Act, this Notice was deemed served three days later, on June 18, 2011.

The Landlords then applied for an order of possession through the Direct Request process. This Application was dismissed with leave to reapply, as the Dispute Resolution Officer could not determine if the Tenant was served with both pages of the Notice.

The Landlords then made this Application, and testified during the hearing they had served the Tenants with both pages of the Notice.

The Tenant denied receiving both pages.

The Tenant repeated that the Landlords had the money for the June rent several times during the course of the hearing.

The Tenant supplied a document from the bank dated July 6, 2011, indicating on June 29, 2011, he has authorized the bank to reissue the Landlords the two money orders.

The Tenant further testified that the Landlords wanted him to stay in the rental unit but were refusing to accept the July 2011 rent money.

Both parties agree no rent has been paid for July of 2011.

In early July of 2011, the Landlords provided a proper notice to the Tenant to enter the rental unit. When the Landlords went to the rental unit they found the locks had been changed. The Landlords had to have the locks replaced in order to gain entry. The Tenant was provided a key to the rental unit by the police, who held the keys at the request of the Landlords.

The Tenant denied having changed the locks.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant is in breach of the Act. The Tenant was required under the Act and tenancy agreement to pay the Landlords the rent on the first day of the month, in this case June 1, 2011.

The Tenant submitted evidence he had put a stop payment on the June rent cheque. As of today, July 21, 2011, the Landlords have still not been paid the June rent. Neither have they been paid the July rent. While the June rent money might be available to the Landlords, as suggested by the Tenant, this does not mean the Landlords have actually been paid their June rent money as required under the tenancy agreement and the Act.

I accept the testimony of the Landlords that the Notice was posted on June 15, 2011, and contained both pages of the required information. I prefer the evidence of the Landlords over that of the Tenant, as I find the Tenant lacked veracity as he gave inconsistent and conflicting testimony throughout the hearing.

For example, he testified that he put a stop payment on the cheque because the Landlords demanded cash, however, he did not supply the Landlords with cash for the rent. Instead, he used two money orders, one of which was not issued until June 13, 2011, and neither money order was received by the Landlords. While the Tenant argued that money orders were “just like cash”, this is inconsistent with his testimony that the Landlords refused his cheque because they wanted cash.

I find the Notice was valid and should not be cancelled. I dismiss the Application of the Tenant to cancel the Notice.

Therefore, I find that the Landlords are entitled to an order of possession effective **two days** after service on the Tenant. I grant and issue an order of possession in those terms.

Based on the testimony of both parties, I find the Tenant has failed to pay the rent of \$850.00 for July, 2011.

Based on the evidence and testimony I also find the Tenant changed the locks in the rental unit and the Landlords are entitled to recover their cost to gain access to the rental unit.

Therefore, I find that the Landlords have established a total monetary claim of **\$1,785.36**, comprised of \$1,700.00 in rent for June and July of 2011, \$35.36 for the locks being changed, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlords retain the deposit of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,360.36**.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: July 21, 2011.

Residential Tenancy Branch