



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested an order of possession, a monetary order for damage to the unit, site or property, unpaid rent or utilities, compensation for damage or loss, recovery of the filing fee, and an order to keep the security deposit. The Tenants’ Application requested more time for to make an application to cancel the Notice to End Tenancy, and to cancel a One Month Notice to End Tenancy for Cause.

The Landlord and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Tenants testified that they filed their Application at the government agent’s office on November 15, 2011, and received a hearing Notice, but they did not realize that they needed to serve their Application on the Landlord. The Tenants stated that the government agent did not explain any service requirements to them. The documents provided to the Tenants clearly explained in writing that the Application and Notice of Hearing must be served on the Landlord. The Landlord stated that he did not receive a copy of an Application from the Tenants and that he was attending the hearing as a result of his own Application.

Section 59(3) of the Residential Tenancy Act, the “Act”, requires that the applicant serve the respondent (in this case the Landlord) with the Application, which includes the Notice of Hearing, within three days. Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to 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*].

The Tenants failed to serve their Application on the Landlord, in accordance with section 89 of the Residential Tenancy Act (the "Act"). The only issues on the Tenants' Application relate to more time to cancel a Notice to End Tenancy and their request to cancel the One Month Notice to End Tenancy, and I find that it is appropriate to dismiss the Tenants' Application.

The Tenants confirmed that they received a copy of the Landlord's Application and Notice of Hearing. The Landlord did not provide a detailed monetary calculation of his claim with his Application and he testified at the hearing that he had not put all of his claims on the Application and some of the monetary amounts he was claiming had changed. The Landlord requested leave to reapply for his monetary claim and requested that the order of possession be the only issue dealt with at this hearing.

I find that it is appropriate to grant the Landlord's request and only deal with the Landlord's request for an order of possession at this hearing. The Landlord's claim for a monetary order for damage to the unit, site or property, unpaid rent or utilities, compensation for damage or loss, and an order to keep the security deposit are dismissed with liberty to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession, if so what date will the tenancy end?

Background and Evidence

The parties agree that they have a tenancy which started on June 01, 2011, with a monthly rent of \$1000.00 due on the first of each month. The tenancy agreement is not in writing. The Tenants paid the Landlord a security deposit of \$500.00 when the tenancy commenced. The parties agree that the Landlord served the Tenants in person with a One Month Notice to End Tenancy for Cause on November 01, 2011. The Tenants confirmed at the hearing that they received both pages of the Notice and read out excerpts from page one and two of the Notice. The Tenants confirmed that they are still in the rental unit and have not moved out.

The Landlord states that he has had a number of problems with the Tenants and that he had the RCMP accompany him to serve the One Month Notice to End the Tenancy for

Cause on November 01, 2011. The Landlord stated that he received rent for November 2011, however the Tenants have not paid rent for December 2011.

The Tenants stated that they thought they would receive one month's free rent as they were aware the Landlord may be moving into the rental unit. The Tenants confirmed they had only received the One Month Notice and not a Two Month Notice to End Tenancy.

The Landlord is requesting an order of possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants were properly served with the One Month Notice to End Tenancy for Cause on November 01, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. As the Notice was personally delivered to the Tenants it was deemed to have been served on November 01, 2011 (the same day).

The Notice is a formal legal document and the Tenants did not file their Application to dispute it within the statutory time frames and when they did finally file their Application on November 15, 2011 they neglected to serve it on the Landlord. The Tenants' Application is dismissed. As the Landlord properly served the Notice on the Tenants and has requested an order of possession, I find that the Landlord is entitled to an order of possession on the rental unit.

The Landlord stated on the One Month Notice that the Tenants had until November 30, 2011 to vacate the premises, however as the Notice was not served prior to the first of the month (the date on which rent is due) as required, the effective date corrects to December 31, 2011, pursuant to the provisions set out in section 47 and 53 of the Act and the Residential Tenancy Policy Guideline.

As the Tenants have not yet moved out of the rental unit, the Tenants are required by section 26 of the Act to pay their rent for December 2011, if they have not yet done so.

As the One Month Notice is in effect, the Tenants must move out on or before 1:00 P.M. on December 31, 2011, and the order of possession is granted to the Landlord.

As the Landlord has partially succeeded in his Application and an order of possession is granted to the Landlord, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding from the \$500.00 security deposit he currently holds.

I order that the Landlord retain \$50.00 from the security deposit in full satisfaction of the filing fee paid for this Application. The balance of the security deposit must be dealt with in accordance with the Act.

Conclusion

The Landlord's claim for a monetary order for damage to the unit, site or property, unpaid rent or utilities, compensation for damage or loss, and an order to keep the security deposit are dismissed with liberty to reapply.

I dismiss the Tenants' Application.

I find that the Landlord is entitled to an order of possession **effective at 1:00 P.M. December 31, 2011**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I order that the Landlord retain \$50.00 from the security deposit in full satisfaction of the filing fee paid for this Application. The balance of the security deposit must be dealt with in accordance with the Act.

The order accompanies the Landlord's copy of this decision.

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: December 05, 2011.

Residential Tenancy Branch