



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, OPC, MNR, FF
 Tenants: CNR, CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to cancel two notices to end tenancy

The hearing was conducted via teleconference and was attended by both landlords; their agent and both tenants.

Despite some difficulty with language at the start of the hearing the landlords' son in law interjected and represented the landlords' interest during the remainder of the hearing. Both landlords were in attendance and did provide testimony; when I had difficulty understanding the landlords' testimony their son in law summarized and provided clarity.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and/or a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 47 of the *Act*.

Background and Evidence

Both parties provided the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on August 3, 2012 for a month to month tenancy beginning on August 1, 2012 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause dated October 31, 2012 with an effective date of November 30, 2012 citing the tenants had engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord; and

- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of November 15, 2012 citing unpaid rent in the amount of \$425.00.

Despite providing a number of reasons that the landlords felt that they had cause to end the tenancy under Section 47 of the Act the landlords provided no testimony or evidence that any illegal activity had occurred prior to the issuance of the 1 Month Notice on October 31, 2012.

The landlord did state that the male tenant committed illegal activity when trying to pay the rent for November, 2012. Through later testimony the parties agreed this event occurred on November 1, 2012.

The parties agree the male tenant attempted to pay rent on November 1, 2012. The parties also agree that the male tenant was banging on the landlords' door that evening to pay that rent. The female landlord testified she wanted the tenant to come back to see her husband who would be home in ½ hour.

There was disagreement between the parties as to what time these events occurred. The tenants submit that they attempted to see the landlord at 7:30 p.m. and the landlords assert it was between 9:30 and 10:00 p.m. In any event the parties agree the rent was not paid that date and the police attended after the landlord contacted 911.

Both parties testified that after the police attended they were advised not to communicate with each other and to have these issues resolved by the Residential Tenancy Branch.

The landlord testified the tenants continued to promise to pay rent to the landlord on several occasions but that they had failed to follow through and provide the actual rent payment.

The parties also agree the tenants have not paid rent for the month of December 2012. The tenants submit that the landlord contacted the Ministry of Social Development and advised the female tenant's worker that the tenant would no longer be living there and the Ministry is currently withholding the female tenant's shelter entitlement, but that they await the results of this hearing.

The female landlord acknowledges contacting the Ministry of Social Development but states that she was seeking the Ministry to provide the landlord with a cheque for the full rent owing for a month and a half. She also states that she was informed by the Ministry worker that the male tenant had advised the worker that the female tenant would not be living in the rental unit any more.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

From the evidence and testimony submitted I find the landlord's have failed to establish the tenants have engaged in any form of illegal activity prior to the issuance of the 1 Month Notice to End Tenancy for Cause on October 31, 2012. As such, I find this notice to be ineffective.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution.

From the testimony of both parties I accept the tenants had attempted to pay rent to the landlord on November 1, 2012 when the rent for November 2012 was due and that it was the landlord who would not accept the rental payment. As such, I find the landlord cannot end the tenancy for the non-payment of rent when it was the landlord's refusal to accept the rental payment.

In addition Section 52 of the *Act* stipulates that in order to be effective, a notice to end tenancy must be in writing and among other things, must be signed and dated by the landlord giving the notice. As noted above the landlord did not date the 10 Day Notice to End Tenancy for Unpaid Rent.

For these reasons, I find the undated 10 Day Notice to End Tenancy for Unpaid Rent served to the tenants on either November 3, 2012 or November 5, 2012 is ineffective.

As to the outstanding rent, I find, from their own testimony that the tenants continue to owe the landlord ½ month's rent for November 2012 and the full month's rent for December 2012. I order the tenants pay this outstanding rent. If the tenant's fail to the pay the rent as soon as possible, the landlord may issue a new 10 Day Notice to End Tenancy for Unpaid Rent, unless the landlord refuses to accept the rental payment.

Conclusion

As I have found the two notices to end tenancy to be ineffective, I dismiss the portion of the landlords' Application seeking an order of possession and grant the tenants' Application to cancel both notices. I therefore find the tenancy remains in full force and effect.

I find the landlord is entitled to a monetary order in the amount of **\$1,275.00** comprised of rent owed. I note that this amount is for the current rent outstanding only.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As I have found the landlord has largely unsuccessful in their claim I dismiss the portion of their Application seeking to recover the filing fee.

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 10, 2012.

Residential Tenancy Branch