



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF

Tenant: MT, CNL, CNR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord; the tenant; an occupant; the tenant's advocate and his observer.

The landlord testified and provided documentary evidence the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 15, 2012 in accordance with Section 89. The tenant and her advocate both testified the tenant had not received a copy the landlord's Application for Dispute Resolution and were unaware the landlord had filed an Application.

With permission of the tenant and her advocate I reviewed tracking information online with Canada Post; the tenant's advocate also reviewed the online information. The tracking information indicated Canada Post had provided the tenant with notice of the package on January 16, 2013 and a final notice on January 21, 2013. The tenant testified she did not receive a notice until the date of this hearing and had not had an opportunity to pick it up yet.

Upon review of both parties Applications, it was clarified that the tenant had applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on December 19, 2012 and the landlord had applied for an order of possession for the rental unit based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 9, 2013 and a monetary order for unpaid rent or utilities.

As the Applications deal with distinctly different notices to end the tenancy and because the tenant had not yet received a copy the landlord's Application I find it necessary to adjourn the landlord's Application to be reconvened at a later date allowing the tenant to receive the landlord's Application from Canada Post. Notice of hearing documents for the reconvened hearing will be attached to this decision for both parties.

In addition, I ordered that should the landlord's package not include a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 9, 2013 the tenant's advocate will contact the landlord to request a copy and the landlord will provide a copy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a 10 Day Notice to End Tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Sections 46 and 49 of the *Act*.

Background and Evidence

The both parties provided a copy of a tenancy agreement signed by the parties on November 14, 2012 for a month to month tenancy agreement for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 paid. The tenancy agreement also indicated the tenant is responsible for 1/3 of the all utility costs.

The parties, however, disagree on the start date of the tenancy. The tenant submits that notwithstanding what the tenancy agreement states the agreement she signed was for a tenancy starting on December 15, 2012 and that the landlord altered the tenancy agreement before a copy was provided to the tenant.

The parties provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord on December 19, 2012 with an effective vacancy date of December 29, 2012 citing the tenant failed to pay rent in the amount of \$1,400.00 but does not indicate the date that it was due and utilities in the amount of \$103.26 but does not indicate when the landlord demanded payment of these utilities.

The tenant submitted that she received the 10 Day Notice on December 19, 2012 but was unable to meet with her advocate in time to file an Application for Dispute Resolution on by December 24, 2012 and then as a result of the Christmas and Boxing Day closures of the Residential Tenancy Branch she filed her Application on the first business day after the 5th day allowed for in the *Act*.

The landlord testified that the tenant had paid \$525.00 towards rent and that she had promised she would be obtaining additional funds from the Ministry of Social Development on December 19, 2012 but that she never provided the landlord with any additional payments.

The landlord also testified that he had received utility bills on or before December 19, 2012 for both hydro and gas and he included the amounts owed on the 10 Day Notice. The landlord testified that he did not complete the due date information for the overdue rent because he felt it was obvious because that date that rent was due is listed in the tenancy agreement.

He also submitted that he did not put a date in the utility section requesting the date of the written demand because he had received the bills for the utilities just before completing the Notice.

The parties provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on December 19, 2013 with an effective vacancy date of March 1, 2013 citing the unit would be occupied by the landlord; the landlord's spouse or a close family member.

The landlord testified that right after the tenant moved in she had called to him to fix things and he finds it too difficult, at his age, to continue to fulfil his responsibilities as a landlord so his family members were going to move into the unit. The landlord also testified the move would cut down the family member's commute time. The landlord submitted that even if his family members were not going to move in to the rental unit he would still want to end the tenancy.

The tenant submits that there has been a "for sale" sign on the property since the start of the tenancy and finds it unlikely that the landlord's family would move into the rental unit if the property was for sale. The landlord testified the listing on the property has expired but they have just not picked up the sign yet.

Analysis

Section 66 allows an extension of a time limit in exceptional circumstances. I accept the tenant was unable to seek advocacy prior to the 5 day deadline to submit her Application for Dispute Resolution and that she did file her Application on the first possible business day once she had secured her advocate. I therefore grant the tenant the extension to submit her Application.

Section 46 of the *Act* stipulates a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52.

Section 46(6) states that a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 52 requires, in order to be effective, a notice to be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

From the landlord's testimony I find the landlord failed to provide the tenant with a demand letter for the payment of utilities that was reflected in the 10 Day Notice issued by the landlord on December 19, 2012 and therefore the landlord cannot treat these utility charges as unpaid rent for the purposes of this Notice.

I also find that the landlord's failure to identify the date that any unpaid rent was due in the Notice was a significant omission in the description of the reason for ending the tenancy identified in the Notice that is sufficient to render the Notice invalid.

Section 49 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice, the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline #2 defines good faith as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

The guideline goes on to explain that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. In the case before me I find that landlord has two motives for ending the tenancy.

The burden is on the landlord to establish that he truly intends to do what he said on the Notice to End Tenancy. The landlord must also establish that he does not have another purpose that negates the honesty of intent or demonstrate he does not have an ulterior motive for ending the tenancy. From the landlord's testimony that he wanted to end the tenancy even if his family member was not moving in and the fact the parties just entered into the tenancy agreement one month prior to the issuance of the 2 Month Notice I find the landlord has failed to establish the good faith requirement.

Conclusion

For the reasons noted above, I find the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on December 19, 2012 to be ineffective and grant the tenant's Application to cancel both notices. I therefore, find the tenancy remains in full force and effect.

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 25, 2013

Residential Tenancy Branch

