



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, RR

For the landlord: OPR, MNR, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a monetary order for money owed or compensation for damage or loss and for an order allowing a reduction in rent.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenant’s security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As a preliminary issue, I determined that the tenant had not marked her application for dispute resolution in a manner which showed that she was disputing a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”); however the tenant said that she understood that she was disputing the Notice as this was the reason for her application.

I accepted the tenant's testimony and I therefore amended her application, to seek cancellation of the Notice.

As a second preliminary issue, I have determined that the portion of the tenant's application dealing with a monetary order and for an order allowing a reduction in rent is unrelated to the primary issue of disputing the Notice.

As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's application and dismissed that portion of the tenant's application for a monetary order and for an order allowing a reduction in rent, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and on the landlord's application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to an order of possession for the rental unit, to a monetary order, and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that the tenancy began on December 1, 2012, monthly rent is \$950.00, and the tenant paid a security deposit of \$475.00 at the beginning of the tenancy.

I note that another tenant is also listed on the tenancy agreement; however the landlord did not serve that tenant with her Application for Dispute Resolution and Notice of Hearing as the evidence was that the tenant had vacated, leaving only the present tenant.

The landlord said that she issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), on February 3, 2013, by posting it on the tenant's door, listing the amount of \$950.00 as unpaid rent as of February 1, 2013.

The Notice informs a tenant that they have 5 days of receipt of the Notice to either pay the rent listed or to dispute the Notice through an application for dispute resolution.

The tenant disagreed that the Notice was posted, as she was given the Notice by her neighbour, who found it in the yard; however, the tenant filed an application for dispute resolution seeking cancellation of the Notice on February 5, 2013. I deem the tenant to have received the Notice.

In support of the Notice, the landlord said that, although she had received three post dated rent cheques at the beginning of the tenancy, one each for December 2012, and January and February 2013, the February rent cheque was not negotiable. The cheques were drawn on the absent tenant's account.

In explanation, the landlord said the tenant was to meet her at the local bank at 9:00 a.m. to deposit funds into the account so that the cheque would be honoured; however the tenant never appeared.

The landlord said she made an inquiry of the bank teller, who informed the landlord that there were not sufficient funds in the account for the amount of the cheque.

In response, the tenant said that the February rent cheque was initially not made good as the landlord deposited that cheque in January. When she received the Notice the tenant said she called the landlord and asked her to meet her at the bank.

The tenant said that she was to meet the landlord at 8:30 a.m., as she had a doctor's appointment at 9:15 a.m., as she had pneumonia. The tenant said that the landlord never appeared, although she did deposit the funds into the account.

The tenant said that as far as she knew, the landlord had cashed the cheque, as she never heard further until receiving the landlord's application for dispute resolution on February 21, 2013.

The tenant said she has asked the landlord for proof that she has not cashed the cheque as she did not want to pay a duplicate rent. To date the landlord has not supplied proof that she has the cheque or that it was deposited.

After the tenant's response, I asked the landlord if she had attempted to deposit the cheque or if she had supplied proof that the cheque would be dishonoured if it was deposited and she said none had been submitted.

The landlord also confirmed that they had not inquired as to the status of the cheque since February 5, 2013.

The landlord posited that it was not her responsibility to chase the tenant for rent, as the tenant should come to her with the rent.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Once the tenant filed to dispute the Notice, as is the case here, the onus was on the landlord to prove that the Notice was valid.

In the case before me, I find the landlord had possession of cheque for the rent for February 2013, and that they have not submitted proof to me that this cheque has been or would be dishonoured through non sufficient funds.

As there is no proof that the rent cheque for February is not negotiable or would be dishonoured, I find that the landlord has presented insufficient evidence that the tenant did not tender payment for the February 2013 rent.

I therefore find that the 10 Day Notice to End Tenancy for Unpaid Rent, issued by the landlord on February 3, 2013, is without merit and I order that it likewise be cancelled.

As a result I find that this tenancy continues until it otherwise ends under the Act.

As I have cancelled the 10 Day Notice to End Tenancy for Unpaid Rent, I dismiss the landlord's request to recover the filing fee.

I dismiss the landlord's claim for a monetary order for unpaid rent for February 2013, with leave to reapply should the cheque be dishonoured or otherwise the landlord fails to receive rent for February 2013.

In this event, the landlord may serve another 10 Day Notice to End Tenancy for Unpaid Rent to the tenant, which would include the February 2013, rent.

I dismiss the landlord's claim for unpaid rent for March as the same is not due as of the day of the hearing, with leave to reapply.

As I have cancelled the 10 Day Notice to End Tenancy for Unpaid Rent, I therefore grant the tenant's application for dispute resolution, which I amended, seeking cancellation of the Notice.

Conclusion

The landlord's application for an order of possession for the rental unit due to unpaid rent is dismissed.

The portion of the landlord's application seeking a monetary order for unpaid rent for February and March 2013 is dismissed with leave to reapply.

The landlord's request for the filing fee is dismissed.

The tenant's application seeking cancellation of the 10 Day Notice is granted as I have cancelled the Notice.

The portion of the tenant's application seeking an order allowing a reduction in rent and a monetary order is severed and the tenant is granted 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: March 01, 2013

Residential Tenancy Branch

