



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, AAT, LAT, LRE, MND, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a Notice to End tenancy that was received on July 4, 2013.
2. To cancel an a Notice to End Tenancy for unpaid rent;
3. For money owed or compensation under the Act;
4. To suspend or set conditions on the landlord's right to enter the rental unit; and
5. To authorize the tenant to change locks.

Both parties appeared, gave 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 at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to allow more time to make an application to cancel a Notice to End tenancy that was received on July 4, 2013, and if granted the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings.

I will, therefore, only consider the tenant's request to allow more time to make an application to cancel a notice to end tenancy and the request to set aside the notice to end tenancy and the landlord's application for an order of possession and monetary order for unpaid rent. The balances of the applications are dismissed, with leave to re-apply.

Preliminary issue

The first issue that I must decide is whether the tenant should be granted more time to be allowed to dispute a notice to end tenancy which was issued on July 2, 2013.

Under section 66(3) of the Act an Arbitrator must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

In this case, the tenant filed their application on July 18, 2013, which is beyond the corrected effective date of July 14, 2013. As a result, the Act does not give me the authority to consider such an extension. Therefore, I find the tenant's application to be allowed more time must be dismissed. As a result, the notice to end tenancy issued on July 2, 2013, is upheld.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to monetary order for unpaid rent?

Background and Evidence

The tenant acknowledged that he received a notice to end tenancy for unpaid rent on July 4, 2013. The tenant acknowledged he did not pay rent within five days of receiving the notice. The tenant acknowledged that he has not paid any rent for July and August 2013 as he feels he is justified in withholding rent.

The landlord testified that the tenant owes rent for July and August 2013, in the amount of \$1,960.00. The landlord stated that tenant further owes \$40.00 in late fees as per the terms of the tenancy agreement.

The tenant testified that there is no term in the tenancy agreement which required him to pay late fees.

Analysis

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

While the tenant filed an application to allow more time to dispute a notice to end tenancy, that application was dismissed as the tenant filed their application after the effective date of the notice. As a result, the notice to end tenancy issued on July 2, 2013, is upheld.

Therefore, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The tenant has failed to pay rent, under section 26 of the Act the tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant withheld rent when they did not have the right under the Act to withhold any portion of rent. Therefore, I find the landlord is entitled to recover unpaid rent for July and August 2013, in the amount of \$1,960.00.

The landlord seeks to recover the amount of \$40.00 for late fees. The landlord has not submitted a copy of the tenancy agreement as evidence to support that there was a clause that the tenant agreed to pay a late fee. The evidence of the tenant was there was no such clause. As a result, I find the landlord has provided insufficient evidence to support this portion of their claim. Therefore, I dismiss the landlord's request to recover any late payment fees.

I find that the landlord has established a total monetary claim of **\$2,010.00** comprised of unpaid rent for July, August 2013 and the \$50.00 fee paid by the landlord for this application. I grant the landlord a formal order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to dispute the notice to end tenancy prior to the effective date of the notice to end tenancy. The tenant failed to pay rent. The tenant's application to extend the time to allow more time to file a dispute was dismissed and the notice to end tenancy issued on July 2, 2013, was upheld.

The landlord was granted an order of possession. The landlord was granted a monetary order in the above amount.

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: August 21, 2013

Residential Tenancy Branch

