



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a Monetary Order for damage or loss under the Act, Regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. I found that in filing this Application the tenant did not provide sufficient particulars or provide a basis to conclude the monetary claim is related to the matter of rent payable under the tenancy agreement or Act. Further, the tenant's written submissions and evidence were received after the deadline for serving evidence. The tenant confirmed that the issue of utmost priority was the fate of the tenancies. Therefore, I dismissed the tenant's monetary claim with liberty to reapply and informed the parties that I would hear and determine whether the 10 Day Notice should be upheld or cancelled.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy issued October 5, 2013 be upheld or cancelled?

Background and Evidence

The tenant rents two separate rental units from the landlords. The tenant resides in unit 424 and sublets unit 422. The parties did not execute a written tenancy agreement for either rental unit. The tenancy for unit 424 formed in 2003 or 2004 and the tenancy for unit 422 formed in 2009 or 2010.

Notices of Rent Increase were issued by the landlord for each unit. The Notices provided to me reflect that the current rent for unit 424 is \$1,660.00 and the rent for unit 422 is \$1,608.00. The monthly rent is payable on the 1st day of every month for each unit.

It was undisputed that the tenant gave the landlord \$1,270.00 for rent for the month of October 2013. The tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on October 5, 2013. The Notice indicates rent of \$1,998.00 was outstanding as of October 1, 2013 and indicates the rental unit as being 422 and 424. The tenant filed to dispute the 10 Day Notice within five days of receiving it.

I heard that prior to October 2013 the tenant had paid the full amount of rent for both units at the same time; however, when the tenant made only a partial payment for October 2013 there was no discussion as to whether this payment was to be applied toward rent for one of the units or a portion allocated to each unit.

During the hearing, the tenant clarified that the \$1,270.00 payment was to be applied to rent for unit 424. .

Analysis

The Act provides for the ways a landlord or tenant may end a tenancy. In order for a landlord to end a tenancy the landlord must serve the tenant with a valid Notice to End Tenancy in the approved form. Upon review of the 10 Day Notice to End Tenancy provided as evidence, I noted the landlord identified the two different rental units as being the rental unit the tenant would have to vacate if the rent was not paid and the outstanding rent that had to be paid was the sum outstanding rent for two different units. Below, I have considered whether the 10 Day Notice issued by the landlord is valid and enforceable.

The Act defines tenancy as

“a tenant’s right to possession of a rental unit under a tenancy agreement”.

The Act defines a tenancy agreement to mean

“an agreement whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”.

The Act defines rent as

“money paid or agreed to be paid...by or on behalf of a tenant to a landlord in return for the right to possess a rental unit...”

The Act defines a rental unit to mean

“living accommodation rented or intend to be rented to a tenant”.

Based upon the above definitions, I find that it is clear that a tenancy agreement, tenancy and rent apply to a particular living accommodation (ie: rental unit). Further, a 10 Day Notice in the approved form provides space to indentify a rental unit, not multiple units. Therefore, I find the enforcement of the rights and obligations of landlords and tenants should be specific to a particular rental unit or living accommodation.

Considering the parties entered into tenancy agreements for the subject units at two different times; the rental units are separate and independent living units; the monthly rent was set for each unit; and, the landlord issued Notices of Rent Increase for each unit, I find it clear that the parties have two separate and independent tenancies for two different rental units. As such, I find the rights and obligations of the parties, including the ending of a tenancy, must be enforced separately.

I find the landlord's use of one 10 Day Notice for two rental units to be prejudicial as failure to pay all the outstanding rent for one unit would result in ending of both tenancies.

In light of all of the above, I find the 10 Day Notice issued by the landlords on October 5, 2013 to be invalid and unenforceable. As a result, I grant the tenant's request to cancel that Notice and the tenancies for both rental units remain in effect at this time.

The landlords remain at liberty to issue 10 Day Notices for each unit to reflect the amount of rent outstanding for each unit. As the tenant confirmed that the \$1,270.00 payment was for unit 424 the outstanding rent for unit 422 is \$1,608.00 and the outstanding rent for unit 424 is \$390.00 for the month of October 2013.

I make no award for recovery of the filing fee as it was undisputed the tenant withheld rent and because the tenant's monetary claim was filed without sufficient particulars.

Conclusion

The 10 Day Notice issued October 5, 2013 has been cancelled and the tenancies for both rental units remain in effect at this time. The landlords are at liberty to issue 10 day Notices for each rental unit to reflect the outstanding rent for each rental unit.

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: November 1, 2013

Residential Tenancy Branch