



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, MNDC, PSF, FF
For the landlord: MNSD, OPC, 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 an order cancelling the landlords’ 1 Month Notice to End Tenancy for Cause (the “Notice”), a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to provide services or facilities required by law, and for recovery of the filing fee.

The landlords applied for an order of possession for the rental unit due to alleged cause, a monetary order for money owed or compensation for damage or loss, 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, each party confirmed that they had received the other party's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution 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 have determined that the portion of the parties’ respective applications dealing with a request for monetary compensation and the tenant’s request that the landlords provide for services or facilities required by law are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant’s and the landlords’ applications and dismissed those portions of the said applications without considering any of the merits of the monetary claims or order for the landlords, with leave to reapply

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause and on the landlords' application seeking an order of possession for the rental unit.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlords' 1 Month Notice to End Tenancy for Cause?

Are the landlords entitled to an order of possession for the rental unit based upon their 1 Month Notice to End Tenancy for Cause?

Background and Evidence

I heard undisputed evidence that this tenancy began on July 1, 2013, monthly rent is \$1250, and that the tenant paid a security deposit of \$625 at the beginning of the tenancy.

I note that these same parties were recently in dispute resolution, in a hearing on August 26, 2013, on the tenant's application seeking cancellation of a 1 Month Notice, monetary compensation, for an order requiring the landlord to comply with the Act, and for an order allowing a reduction in rent and the landlords' application seeking an order of possession for the rental unit for alleged cause. Another Arbitrator issued a Decision on August 28, 2013, dismissing the applications of both parties.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support the Notice.

The landlord said that he served the tenant a 1 Month Notice to End Tenancy for Cause on August 28, 2013 by attaching it to the tenant's door, listing an effective move out date of September 30, 2013.

The Notice explains that the tenant had 10 days to dispute the Notice. It also explains that if the tenant does not file an application to dispute the Notice within 10 days, which is the case here as the tenant filed his application for dispute resolution on September 3, 2013.

The causes listed on the Notice alleged that the tenant has allowed an unreasonable number of occupants in the rental unit, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk, and has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

Included in the extensive amount of documentary evidence submitted by the landlords was a copy of the Notice. The Notice was unsigned, and the landlords confirmed serving the tenant with an unsigned Notice.

Analysis

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

Landlords' application (considered first due to their required burden of proof)-

In order to end a tenancy under section 47 of the Act for alleged cause, as is the case before me, the landlord is required to serve upon the tenant a Notice conforming to section 52 of the Act.

Section 52 of the Act states, among other requirements, that in order for a notice to end tenancy to be effective, it must be signed by the landlord giving the Notice.

As the 1 Month Notice to End Tenancy for Cause dated August 28, 2013, is not signed by the landlord, I find the Notice does not meet the form and content required under section 52 of the Act; I therefore find the Notice is invalid and of no force or effect and I hereby dismiss the landlords' application seeking an order of possession for the rental unit.

I note that the landlords asked to retain the tenant's security deposit; however the landlords are informed that this issue is a matter to be dealt with at the end of the tenancy in accordance with the Act, and I therefore dismiss their request to retain the tenant's security deposit, with leave to reapply.

Tenant's application-

As I have determined that the Notice of August 28, 2013, is invalid and of no force or effect, I therefore grant the portion of the tenant's application seeking cancellation of the Notice.

I therefore order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As the tenant has been successful with his application, I award the tenant recovery of his filing fee of \$50.

In satisfaction of his monetary award, the tenant is directed to deduct the amount of \$50 from his next monthly rent payment.

Conclusion

The landlords' application for an order of possession for the rental unit due to alleged cause is dismissed. The portion of the landlords' application dealing with monetary compensation has been severed and is dismissed with leave to reapply.

The tenant's application seeking cancellation of the Notice is granted. The portion of the tenant's application dealing with monetary compensation and orders for the landlords has been severed and is dismissed with leave to reapply.

The tenant is authorized to deduct \$50 from his next monthly rent payment for reimbursement of his 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: October 10, 2013

Residential Tenancy Branch

