



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, LRE, LAT, RR

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possess; and
2. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a notice to end tenancy for cause, issued on September 28, 2013;
2. Suspend or set conditions of the landlord's right to enter the rental unit;
3. To authorize a tenant to change the locks to the rental unit;
4. Allow a tenant to reduce rent for repairs; and
5. Return all or part of the security deposit.

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.

Preliminary and procedural matters

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 tenants have indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is 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 tenants' request to set aside the notice to end tenancy and the landlord's request for an order of possession. The balance of the tenants' application is dismissed, with leave to reapply.

In this case, the tenant stated they filed their evidence package late, however, this was not received by the Arbitrator. The landlord stated they did not receive the tenants' evidence package until the morning of the scheduled hearing. Under the Residential Tenancy Branch Rules of Procedure the tenants were to provide their evidence at least five (5) days before the dispute resolution proceeding. As a result, the tenants' evidence was excluded as it would be administrative unfair to the landlord and any adjournment would be unfair and prejudicial to the landlord.

In a case where a tenants have applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the notice to end tenancy issued on September 28, 2013, be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed that a one month notice to end tenancy for cause was served on the tenants indicating that the tenants are required to vacate the rental unit on October 31, 2013.

The landlord's agent stated the tenants filed outside the time limited as they had received the notice to end tenancy on September 28, 2013.

The landlord's agent stated on September 27, 2013, she contacted the tenants to inform them that they would be attending the rental unit on September 28, 2013, to serve them with a notice to end tenancy.

The landlord's agent stated on September 28, 2013, they attended the tenants' rental unit with a witness and spoke to the female tenant thru the door, and the tenant refused to open the door to accept service of the notice to end tenancy.

The landlord's agent testified as a result they taped the notice to the door, however, they just went down the hallway and waited for a minute or two, when they witnessed the female tenant opened the door and retrieved the notice.

The female tenant acknowledged she received the notice on September 28, 2013, however, stated that it is assumed they received in on the October 1, 2013.

Analysis

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

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants had received the notice to end tenancy on September 28, 2013, which was witnessed. The tenant also acknowledged receiving the notice on September 28, 2013, although argued it was not assumed received until October 1, 2013.

However, the deemed service provision under the Act, only applies when there is no evidence of when the actual document was received and the deemed service provision is rebuttal when there is evidence to the contrary, such as in this case.

The tenant acknowledged she received the notice to end tenancy on September 28, 2013, under the provisions of the Act the tenant had ten days to file an application for dispute resolution which was October 8, 2013. The tenants' application for dispute resolution was filed on October 11, 2013, which is outside the time limited permitted under the Act. The tenants did not apply to allow more time to make an application to cancel a notice to end tenancy.

Therefore, as the tenants did not apply to dispute the notice within 10 days after it was received on September 28, 2013, they were presumed to have accepted the notice and were required to move out of the rental unit on the effective vacancy date of the notice, which was October 31, 2013. As a result, I dismiss the tenants' application to cancel the notice to end tenancy.

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

I find that the landlord has established a total monetary claim of \$50.00 comprised of the \$50.00 fee paid by the landlord for this application. The landlord is authorized to retain this award from the tenants' security deposit if full satisfaction of the claim.

Conclusion

The tenants failed to file an application for dispute resolution within 10 days of receiving the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may retain \$50.00 from the security deposit in full satisfaction of the claim.

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 21, 2013

Residential Tenancy Branch

