



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNC, CNR, MNDC, OLC, RP, PSF, LAT

Landlord's application: OPC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenants applied to dispute a 1 Month Notice to End Tenancy for Cause; to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; as well as requests for several other orders for action by the landlord. The landlord applied for an Order of Possession for cause and unpaid rent; a Monetary Order for unpaid rent and utilities; and, authorization to retain the security deposit.

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.

The tenants stated they had not received the landlord's hearing documents. The landlord's witness testified that the landlord's hearing documents were sent to each tenant at the rental unit address via registered mail on January 16, 2014 and that the registered mail remains unclaimed. The landlord's witness had provided the registered mail receipts, including tracking numbers, and the Canada Post tracking information, as proof of service. A review of the tracking information showed that notice cards and final notice cards had been left by Canada Post.

Section 90 of the Act deems a person to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail. Further, the remedies sought by the landlord are as outlined on the Notices to End Tenancy that the tenants had filed to dispute.

In light of the above, I found the tenants to be deemed served with the landlord's hearing documents and that they are aware of the matters under dispute. Therefore, I proceeded to consider both applications.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy be upheld or cancelled?
2. Should the 1 Month Notice to End Tenancy be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession?
4. Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
5. Are the tenants entitled to monetary compensation from the landlord?

Background and Evidence

The tenancy commenced October 1, 2013 and the tenants paid a security deposit of \$700.00. The tenants are required to pay rent of \$1,400.00 on the 1st day of every month for a fixed term ending September 1, 2014. Utilities are not included in rent. Since there are two units at the property and the electricity and gas are on one meter, the electricity and gas accounts are in the landlords' name. The landlord then collects utility payments from the respective units. The bills are allocated 60% to the rental unit and 40% to the lower unit.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) to the tenants on December 2, 2013 with a stated effective date of January 2, 2014. The tenants filed to dispute the 1 Month Notice within the time limit for doing so.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on January 2, 2014 indicating \$1,400.00 in rent was due on January 1, 2014 and outstanding utilities of \$202.34 that were demanded in writing on January 1, 2014. The 10 Day Notice was posted on the door on January 2, 2014 and has a stated effective date of January 8, 2014. The tenants amended their application to dispute the 10 Day Notice within the time limit for doing so.

Below, I have summarized the parties' respective positions in regard to the 10 Day Notice.

The landlord submitted that the tenants failed to pay rent for January 2014. Further, the tenants did not pay the utilities owed for November 2013 and December 2013 despite showing them the utility bills for those months. The landlord acknowledged that the

tenants had not been served with a written demand for payment of the utilities prior to issuing the 10 Day Notice.

The tenants submitted that the landlord was given \$1,400.00 in cash, at the door to the rental unit, in the morning hours of January 2, 2014. They were not provided a receipt despite requesting one from the landlord. When the tenants returned home later that day they found the 10 Day Notice posted on their door. The tenants acknowledged seeing utility bills for the previous months but explained they did not pay the utilities because the landlord served them with a 10 Day Notice.

Upon further enquiry, the female tenant stated that she contributes \$1,000.00 toward the monthly rent and that she had withdrawn this amount from the bank on December 20, 2013. The tenant did not provide any bank records to corroborate her position.

The tenant stated that the landlord never gave receipts. The tenants; however, acknowledge that they had given a cheque that was dishonoured earlier in the tenancy.

The landlord responded by stating he had given receipts in the past and that the tenants' submissions were lies. In the landlord's evidence was a receipt for payment of rent for October 2013 plus an NSF charge dated October 16, 2013.

Below, I have summarized the parties' respective monetary claims against the other.

The landlord is seeking to recover unpaid rent of \$1,400.00 for the month of January 2014 plus \$202.34 for unpaid utilities for the months of November and December 2013 as indicated on the 10 Day Notice. The landlord also provided copies of several pages of electric and gas bills to substantiate the claim for utilities.

The tenants are seeking return of the security deposit; moving costs of \$500.00; and, compensation equivalent to one month's rent. The tenant testified that the claims for compensation relates to a month-long sewage back-up; lights that do not work in the rear of the house; frequent disturbances by the tenant living in the lower unit; the landlord knock coming to their door without giving advance notice; and, because they "need a break" since they were being evicted so shortly after moving in.

The landlord responded by stating that he called a plumber to the property upon being notified there was a plumbing issue. The sewer line had been plugged by a tampon flushed into the toilet and the plumber was able to unclog the line. Further, the landlord stated that he attended the property frequently or drove by and noticed the lights in the rear of the house working. The landlord also provided numerous text messages

exchanged between the tenant living in the rental unit and the tenant living in the lower unit. The text messages indicate that the lower tenant was disturbed by the fighting that took place in the rental unit between the co-tenants and that the fighting caused her dog to bark.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement. If a tenant fails to pay the rent that is due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Act provides that where a tenant is required to pay utilities to a landlord, the landlord may treat the unpaid utilities as unpaid rent, and issue a 10 Day Notice, if the tenant does not pay the utilities within 30 days after receiving a written demand. In this case, the landlord had not given the tenants a written demand for utilities and, as such, was not in a position to include unpaid utilities on the 10 Day Notice. Therefore, I have not further considered whether the tenancy should end due to unpaid utilities. Since the tenants acknowledged they did not pay the outstanding utilities indicated on the 10 Day Notice I find they were not prejudiced by the inclusion on the 10 Day Notice.

In light of the above, I find the issue to determine is whether the tenancy should end for unpaid rent (not unpaid utilities).

The tenants in this case, disputed the 10 Day Notice, although their reasons for disputing the 10 Day Notice were not made clear in amending their application. Nevertheless, during the hearing, the tenants allege that they had paid the rent for January 2014 rent before the landlord served them with a 10 Day Notice.

Where a tenant dispute a 10 Day Notice on the basis the rent had been paid, the burden to prove rent was paid falls upon the tenant. The burden of proof is based on the balance of probabilities. I find it reasonable that a tenant who asserts they paid the rent in question would provide documentary evidence that would support their position where possible. In this case, the tenant stated that she withdrew \$1,000.00 from her bank account on December 20, 2013 yet she did not provide banking records as evidence. Of further consideration is the tenant's apparent lack of credibility since the tenants stated the landlord had not issued receipts before yet the landlord provided a copy of receipt dated issued to the tenants on October 16, 2013 when they paid funds to replace their dishonoured cheque. Taking into account the tenant's burden of proof, the tenants' lack of corroborating evidence, and testimony that conflicts with the

landlord's documentary evidence, I find on the balance of probabilities that I prefer the landlord's submission that the rent for January 2014 remains unpaid. Accordingly, I uphold the 10 Day Notice and dismiss the tenants' request to cancel it.

I note that the landlord failed to include his name in one of the spaces provided on the 10 Day Notice. Since the landlord provided his name and signature in other spaces on the Notice, which is consistent with the landlord's name on the tenancy agreement, I find the omission is not misleading to the tenants. Therefore, the 10 Day Notice is amended pursuant to section 68 of the Act.

Further, the stated effective date of the 10 Day Notice is incorrect; however, an incorrect effective date does not invalidate Notice to End Tenancy. Rather, section 53 of the Act provides that the effective date is automatically changes to comply. Since the tenants acknowledged receiving the 10 Day Notice on January 2, 2014 the effective date reads January 12, 2014.

As I have upheld the 10 Day Notice and the tenancy ended effective January 12, 2014, I grant the landlords' request for an order of Possession. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

The landlord is awarded \$1,400.00 for unpaid rent for January 2014. In addition, I grant the landlord's request for unpaid utilities in the amount of \$202.34. While the landlord was not in a position to include the unpaid utilities on the 10 day Notice, I am nevertheless satisfied that the landlord entitled to recover utilities payable under the terms of tenancy and as supported by the utility bills submitted into evidence.

Given the landlords' success in this matter, I award the filing fee to the landlord. I also authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent.

In light of the above, the landlord is provided a Monetary Order in the amount of \$952.34 calculated as [\$1,400.0 unpaid rent + \$202.34 unpaid utilities + \$50.00 filing fee – \$700.00 security deposit].

I have not given further consideration to the 1 Month Notice or the tenants' request for orders since the tenancy has ended for unpaid rent.

With respect to the tenants' monetary claims, I dismiss the claims in their entirety for reasons given below.

1. The security deposit has been awarded to the landlord in partial satisfaction of unpaid rent.
2. The cost to move is an anticipated cost and would not be recoverable at any time since I have found that the end of this tenancy is the result of the tenants' failure to pay rent.
3. Where a tenant seeks compensation for loss of use and quiet enjoyment of the rental unit, the tenant must be prepared to show that they requested the landlord take action to rectify the situation and that the landlord's failure to take reasonable action resulted in the tenant suffering a loss in the amount claimed. If a landlord will not make repairs that are necessary, a tenant is at liberty to seek repair orders by filing an Application or proceed to make an emergency repair in certain circumstances. A tenant who suffers temporary inconvenience, contributed to the damage or loss, or failed to mitigate their loss, is generally not entitled to compensation.

In this case, the tenant presented a vague submission that sewer backed up into the unit for a long period of time leaving the shower and toilet unusable for a month. The tenant did not give specific dates or indicate how they were able to bath and go to the bathroom during this time. In contrast, the landlord provided specific testimony that he had the plumber attend the unit on November 21, 2013 in response to a complaint that the sewer line had become clogged and that the line was successfully unclogged. The tenant did not provide a response to the landlord's assertion that the clog was the result of a tampon being flushed into the toilet. I also note that the tenant removed the request for "emergency repairs" on the application. Considering these factors, I find I am unsatisfied that the tenants suffered loss of use of the toilet and shower facilities for a month after notifying the landlord that the sewer had backed up due to no fault of their own.

The tenant complained that there were electrical problems in the back of the house but the landlord disputed this assertion and I was not provided other evidence to support the tenants' position.

Where a tenant is disturbed by another tenant, to establish a claim against the landlord, the tenant must show that the tenant notified the landlord of the problem and that the landlord sat idly by and allowed the disturbances to continue. In this

case, I was not provided evidence that the tenant had notified the landlord that they were being unreasonably disturbed by the lower tenant. Also, it would appear that the tenants' fighting contributed to the barking of the dog living in the lower unit.

The tenant stated the landlord did not give notice prior to attending the property. As the tenant was informed at the hearing, a landlord is not required to give notice before knocking on the door.

4. There is no provision in the Act that provides a financial "break" to a tenant that is evicted for cause or unpaid rent.

Conclusion

The tenants' application is dismissed in its entirety. The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the security deposit and has been provided a Monetary order for the balance of \$952.35 to serve and enforce as necessary.

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: January 30, 2014

Residential Tenancy Branch

