



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, MNR, MNSD, FF

Tenant: MT, CNC, CNR, MNDC, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel two notices to end tenancy; an order to have the landlord comply with the *Residential Tenancy Act* (*Act*), regulation or tenancy agreement; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy; for an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and a monetary order for compensation, I find that the additional orders sought by the tenant are sufficiently unrelated to the issues of the two notices to end tenancy.

As such, I dismiss the portion of the tenant's Application seeking an order to have the landlord comply with the *Act*, regulation or tenancy agreement and a monetary order for compensation, with leave to reapply at a future date.

At the outset of the hearing the landlord testified that there were currently no rental arrears and as such no longer a need for a monetary order. I amend the landlord's Application to exclude the matter of a monetary order and to retain the security and pet damage deposits.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent or for cause; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Cause and a 1 Month Notice to End Tenancy for Cause; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided the following relevant documents as evidence:

- A copy of a tenancy agreement signed by the parties on September 2, 2013 for a 7 month and 16 day fixed term tenancy beginning on September 14, 2013 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 and a pet damage deposit of \$400.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 2, 2014 with an effective vacancy date of January 22, 2014 indicating the tenant had failed to pay rent in the amount of \$1,200.00 due on January 1, 2014; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on January 17, 2014 with an effective vacancy date of February 28, 2014 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord submits that the tenant provided a cheque for rent in the amount of \$950.00 for January 2014 rent. The tenant submits that the landlord had agreed to reduce the rent by \$50.00 per month because the landlord continued to store her belongings in a storage room and shed in the residential property. The tenant submits that as such she reduced her January 2014 rent by \$250.00 representing this reduction for the months of September 2013 to and including January 2014.

The landlord submits that while that had had email discussions about this and she did offer a \$50.00 reduction she did not receive a response from the tenant agreeing to the reduction and she never indicated that the reduction would be retroactive to the start of the tenancy.

The landlord submitted that she served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on January 2, 2014. The landlord confirmed that after checking online, Canada Post confirms that the registered mail was successfully delivered to the tenant on January 10, 2014.

The landlord confirmed she received a cheque for \$250.00 from the tenant on January 14, 2014. The landlord has provided a copy of a receipt for use and occupancy only dated January 14, 2014 that she issued upon receiving this cheque.

The landlord submits that the tenant refused access to the rental unit for a viewing by a potential purchaser because after the landlord's realtor had provided the tenant with sufficient notice of the viewing.

The tenant submits that even though she had advised the realtor that the time for the viewing did not work because she was having company all weekend she had the unit ready for the realtor who did not show up at the appointed time. The landlord submits the realtor did not attend the unit because the tenant had responded twice (once by text message and then by email) that it was not a good time.

The landlord submits that the tenant also, at first, would not allow the landlord's real estate agent to view the rental unit at the start of the listing so the realtor could assess the property but that she later allowed entry to the agent. The tenant submits that she has been compliant with all of the landlord's requests for entry and viewings. The landlord testified that after these occurrences she did not discuss with the tenant that this was a problem or that it would impact the tenancy.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

Despite the provision in Section 90 of the *Act* that states if a document served to a party in a tenancy by registered mail it is deemed received 5 days later when there is evidence that the document was received at a different time then the actual date the document was received is accepted as the date received.

As such, in the case before me, I find the tenant received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent on January 10, 2014 and therefore, the tenant had until January 15, 2014 to pay any outstanding rent owed or file an Application for Dispute Resolution.

I accept, from the landlord's testimony that she received the tenant's payment on January 14, 2014. As a result, I find the tenant has complied with the requirements of Section 46(4) in paying all of the overdue rent and therefore the notice has no effect and is cancelled.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 29 of the *Act* states a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering and the date and time of the entry;
- c) The landlord provides housekeeping or related services under the tenancy agreement and the entry is required for those purposes;
- d) The landlord has an order of the director authorizing the entry;
- e) The tenant has abandoned the rental unit; or
- f) An emergency exists and the entry is necessary to protect life or property.

While Section 29 does not require an agreement from the tenant for the landlord to enter the rental unit if the landlord issues a notice of entry under Section 29(b) I find that the landlord has failed to provide any warning to the tenant that such a refusal could result in the landlord seeking to end the tenancy.

As such, I find that the landlord has not given the tenant a proper notification that would allow her time to correct her behaviour before issuing a notice to end the tenancy. In fact, I note that the 1 Month Notice to End Tenancy for Cause that was issued to the tenant was issued the day before the proposed January 2014 viewing was to occur. I find that the landlord could have attempted to contact the tenant and discuss the issue prior to issuing the 1 Month Notice.

For these reasons, I find the 1 Month Notice to End Tenancy for Cause issued on January 17, 2014 is not enforceable.

Conclusion

Based on the above I dismiss the landlord's Application in its entirety and I grant the tenant can cancel both Notices to End Tenancy with the tenancy remaining in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. This order must be served on the landlord. If the tenant fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: February 28, 2014

Residential Tenancy Branch

