



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was set for a telephone conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to: cancel a notice to end tenancy for unpaid rent or utilities; allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee.

The Landlord appeared for the hearing with her husband who was acting as the agent on behalf of the second Landlord named on the Application, both of whom provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. The Tenant appeared for the hearing and also provided affirmed testimony; however, the Tenant did not provide any documentary evidence prior to the hearing.

The hearing process was explained and the participants were asked if they had any questions. No issues were raised by any of the parties in relation to the service of documents under the *Residential Tenancy Act* (the “Act”) and Rules of Procedure. I have reviewed the evidence before me, but only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Tenant allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

Both parties agreed that this tenancy started on September 15, 2011 for a fixed term of one year after which it continued on a month to month basis. The Landlords and Tenant

signed a written tenancy agreement which states that monthly rent is payable by the Tenant in the amount of \$1,275.00 on the first day of each month.

The Landlord's agent testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by registered mail on February 2, 2014 because the Tenant had failed to pay rent in the amount of \$5,100.00. The Notice was provided as evidence along with the Canada Post tracking number as evidence for this method of service and shows an effective date of vacancy of February 17, 2014. The Tenant confirmed receipt of the Notice.

The Landlord's agent testified that to date, the Tenant has not paid rent for the months of October, 2013 to March, 2014, leaving an outstanding balance of \$7,650.00 in rent arrears.

In the Landlords' written submissions a request was made for the vacant possession of the rental suite. During the hearing the Landlord confirmed that she wanted an Order of Possession as the Tenant had not paid any of the rent.

The Tenant testified that he had paid rent for October, 2013 but admitted that he had not paid rent for November, 2013 to January, 2014 because he had completed emergency repairs to the rental suite. The Tenant testified that he had not paid rent for the months of February and March, 2014 because he had made the Application which enabled him to not pay rent.

The Tenant was asked to detail the emergency repairs he claims he completed and testified that this included repairs to the front deck of the property which he had fallen through on a number of occasions, repair of a collapsed cellar roof and repair of burst water pipes which occurred during the winter of 2012 and 2013. The Tenant went onto explain that he had endured a lot of time and cost in doing these repairs and these were repairs which the Landlord should have completed.

When the Tenant was asked why he had not addressed these repairs with the Landlord in writing and whether he had got consent from the Landlord to not pay for his rent for these months, the Tenant testified he had permission to deduct this rent by e-mails which were contained in the Landlords' evidence package.

The Landlords provided a number of e-mails in their written submissions and this shows no e-mails where the Landlord had given permission for the Tenant to deduct rent. Rather, the e-mails indicate that the Landlords made repeated requests for payment of rent starting in December, 2013. The Landlord testified that they did not become aware

that the Tenant had not paid rent for October and November, 2013 until December, 2013. As a result, the Landlords sent the Tenant an e-mail at the end of December, 2013 requesting the rent payments. The Landlords sent the Tenant another e-mail in January, 2014 requesting the November and December, 2013 rent.

The Landlord testified that they even tried to call the Tenant but his cell phone was not working. On January 6, 2014 the Tenant responded to the Landlord's e-mail apologizing for the delay and stating that the other Landlord had given him until the end of the month to pay the outstanding rent and that he has not been able to get to his bank in Edmonton to pay this. The Landlord sent the Tenant another e-mail on January 31, 2014 informing the Tenant that it was his last day to pay the outstanding rent.

The Landlords also provided bank statements in evidence which indicate rent payments into the Landlord's account for May, June, July and August, 2013 but show no payments were made after this time.

Analysis

In relation to the Notice, I find the content of the approved form complied with the Act and that it was correctly served to the Tenant pursuant to Section 88(c) of the Act.

Section 26(1) of the Act states that a Tenant must pay rent when it is due under the tenancy agreement whether or not the Landlord complies with the Act, the regulations or the tenancy agreement.

The Tenant submitted that he had not paid his rent because he had completed repairs to the rental suite, some of which he claimed were emergency repairs, and that he had permission from the Landlord to complete these repairs. However, the Tenant failed to provide any supporting evidence in relation to these repairs and sufficient evidence to show that he had written permission from the Landlord to not pay rent.

The Act also does not allow a Tenant to withhold rent because they have made an Application to dispute a Notice for unpaid rent or utilities. I also find that the Tenant failed to provide sufficient evidence to show that he had followed the steps and provisions laid out in Section 33 of the Act relating to emergency repairs.

Furthermore, the Landlords' evidence clearly shows that the Tenant was informed of the rental arrears in December, 2013 and made no payment of rent until the Tenant indicated in an e-mail that this would be paid by the end of January, 2014, which it was not.

While the Tenant did make the Application to dispute the Notice within the time limits prescribed by the Act, I find that the Tenant has not provided sufficient evidence to show that he was entitled under the Act to withhold rent or that he paid the amount of rent outstanding within the five days outlined in the Notice. Therefore, the Notice is upheld and remains in effect.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

As the Landlord made an oral request, I grant the Landlord an Order of Possession. As the effective date of vacancy on the Notice has passed, the order is effective two days after service on the Tenant.

As the tenancy has been ended in accordance with the Act, the Tenant's remaining Application is now moot and will have no effect on the tenancy.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application in its entirety without leave to re-apply.

The landlord is granted an Order of Possession which is effective 2 days after service on the Tenant. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court 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: March 27, 2014

Residential Tenancy Branch

