



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, OPR, MNR, MND, MNDC, MNSD, FF
CNC, CNR, OLC, RR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord and the Tenant.

The Landlord applied for an Order of Possession for cause and unpaid rent or utilities, and for a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); to keep the Tenant’s security deposit; and to recover the filing fee for the cost of the Application.

The Tenant applied to: cancel the notice to end tenancy for cause and unpaid rent; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; for the Landlord to comply with the Act, regulation or tenancy agreement; and to recover the filing fee from the Landlord for the cost of the Application.

The Landlord appeared for the hearing with an advocate and the Tenant appeared for the hearing with the Co-Tenant. The Landlord testified that she had served the Tenant with a copy of her Application requesting an Order of Possession and a Monetary Order for unpaid rent or utilities by posting it to the Tenants door. The Landlord then amended her Application and served the amended copy with her monetary claim and evidence by registered mail. The Tenant served the Landlord with a copy of her original Application and the amended Application and the evidence by registered mail. Both parties confirmed receipt of each other’s Application and I find that they were served in accordance with the provisions of the Act and the Rules of Procedure.

Preliminary Matters

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single application.

As a result, I have determined that I will not deal with all the dispute issues placed on the Tenant's and Landlord's Applications in this hearing. Not all the claims are sufficiently related to the main issue of whether or not the tenancy will continue. Therefore, I will deal with the requests to either uphold or set aside the notice to end tenancy for unpaid rent or utilities; the notice to end tenancy for cause; and the Landlord's request for a monetary order for unpaid rent. However, the parties were given leave to re-apply for the claims not dealt with in this decision as detailed below.

The Tenants also explained that their Application for the Landlord to comply with the Act, regulation or tenancy agreement was in relation to a request for the Landlord to complete repairs to the rental unit.

Issue(s) to be Decided

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed 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 to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

- Is the landlord entitled to an Order of Possession?
- Should the notice to end tenancy for cause and unpaid rent be cancelled?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on December 1, 2009 on a month to month basis. Rent is payable by the Tenants to the Landlord in the amount of \$1,650.00 on the last day of each month. No monies were given or requested at the start of the tenancy for a security deposit; however work was completed to the rental suite in lieu of the security deposit.

The Co-Tenant testified that the Landlord had accused them of being negligent in causing flood damage to the property in February, 2014 based on the installation of a kitchen faucet which they had installed several months prior to the flood. The Co-tenant claims that the Landlord was unable to get her insurance company to fix the repairs

caused by the flooding in the kitchen and as a result, seeks to put the blame on the Tenants and make them pay for the repairs.

As a result, the Landlord issued the Tenants personally with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on February 20, 2014 and seeks to end the tenancy because the Tenants have caused extraordinary damage to the rental unit. The 1 Month Notice was provided as evidence and shows an effective date to end the tenancy on March 31, 2014. The Tenant disputes the 1 Month Notice stating that the flood was an accident and was not caused through any negligence on their behalf, which is the reason why they applied to dispute it on February 21, 2014.

The Co-tenant testified that on February 28, 2014, when their rent for March, 2014 was due, they did not pay the rent because the Landlord had failed to make repairs caused by the flooding which the Landlord was trying to blame on them.

In response the Landlord served the Tenant by attaching a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") to the Tenant's door on March 4, 2014. The 10 Day Notice was provided as evidence and shows that the Tenants failed to pay rent in the amount of \$1,650.00 that was due on February 28, 2014 with an effective vacancy date of March 14, 2014.

The Tenant testified that they received the 10 Day Notice on March 4, 2014 which was attached to their door. The Tenants felt that they should not have to pay rent for March, 2014 because the Landlord had failed to do the repairs that she was responsible for. As a result, the Tenant amended her Application to dispute the 10 Day Notice on March 6, 2014. The Co-Tenant testified that they decided on March 7, 2014 to pay half of their rent in the amount of \$800.00 which was registered mailed to the Landlord in the form of a money order. However, the Landlord refused to accept only half of the rent and the money order was not cashed. The Tenants sought some advice and realised that they were not allowed to withhold all their rent and as a result, sent the Landlord another \$800.00 in the form of a money order on March 19, 2014. The Tenant provided the Canada Post tracking numbers as evidence of these payments.

The Landlord testified that she had cashed the money orders when she received both of the postal money on March 19, 2014 for full rent. The Landlord testified that she explained to the Tenants that the rent had been paid outside of the five day time limit as required by the 10 Day Notice and that while she had received all of the rent for March, 2014, she was still seeking to evict the Tenants on the basis of both notices. The Landlord testified that in addition, the Tenants had not paid rent for April, 2014.

The Co-Tenant testified that they had not paid April, 2014 rent because they had disputed the notices to end tenancy and were waiting the outcome of the hearing to determine whether they could continue to withhold rent.

Analysis

In my analysis of the 10 Day Notice and 1 Month Notice, I find the contents of the Notice and the manner in which they were served to the Tenant complied with the Act. I also find that the Tenant applied to dispute both notices within the time limits stipulated by the Act.

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. Section 46(4) also explains that within five days of receiving a 10 Day Notice, a Tenant may pay the overdue rent or dispute the 10 Day Notice.

I have begun my analysis by focusing on the 10 Day Notice. The Act requires the Tenant to pay all of the overdue rent within five days of being served with a 10 Day Notice. In this case, I find that the Tenant received the 10 Day Notice on March 4, 2014 and failed to pay the full amount of rent due under the tenancy agreement within the 5 day period allowed by the Act. However, the Act also allows the Tenant to dispute the 10 Day Notice within five days of receiving it, but the Tenant must prove that they had authority under the Act to withhold rent.

While the Tenant did pay the outstanding rent for March, 2014, this was not paid within the five day time limit allowed under the Act. In addition, I find the Tenant's explanation that all the rent was not paid within the five day time period because the Landlord failed to do the repairs, is not sufficient grounds to withhold rent in relation to Section 26(1) of the Act. I also find that a Tenant was not able to withhold April, 2014 rent pending the outcome of a dispute resolution hearing as this also is not permitted by the Act.

Therefore, I find that the Tenant pursued a course of action in not paying their rent on the date required by the tenancy agreement and this is a breach of the Act, and as a result the 10 Day Notice cannot be cancelled on these grounds.

Based on the foregoing, I find that the Landlord is entitled to an Order of Possession and that the tenancy is to end accordingly as the date of vacancy on the 10 Day Notice has passed. As a result, I did not consider any of the evidence submitted by the parties in relation to the 1 Month Notice because this notice is now moot as the tenancy is ending under the 10 Day Notice.

As the Tenant testified that April, 2014 rent has not been paid, I also find that the Landlord is entitled to a Monetary Order for this amount. As the landlord has been successful in her claim, she is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of her Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,700.00.

Conclusion

The Landlord and Tenants did engage in a lengthy discussion about a mutual date to end the tenancy, but the parties were unable to reach an agreement that I would have been able to record as a settlement agreement pursuant to Section 63 of the Act.

Therefore, for the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord's Application effective **2 days after the order is served on the Tenant**. This order may then be enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

I further grant a Monetary Order in the amount of **\$1,700.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

The remainder of Landlord's monetary claim, apart from the unpaid rent, is dismissed with leave to re-apply.

The Tenant's Application to cancel the notices to end tenancy, for the Landlord to comply with the Act (namely to make repairs to the rental unit), and to recover the filing fee, are dismissed without leave to re-apply. However, the Tenant is at liberty to make an Application to claim for monetary loss or compensation for a reduction in the value of the tenancy.

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: April 15, 2014

Residential Tenancy Branch

