



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, CNC, ERP, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for an Order of Possession for unpaid rent. The tenants filed amended Applications seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause; Orders for emergency repairs; and, monetary compensation for emergency repairs and damage or loss under the Act, regulations or tenancy agreement. 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.

Preliminary and Procedural Matters

In filing their respective Applications, both parties named two tenants; however, I noted that only one tenant had signed the two tenancy agreements before me. As such, I found that only the female tenant had privity of contract and the male respondent has no standing as a tenant under the Act. Therefore, I amended the Applications to exclude the male respondent as a named party. The male respondent shall be referred to the “occupant” from the point forward.

Landlord’s Application

The landlord sent the hearing documents and evidence to the tenant via registered mail at the rental unit address and at a PO Box number. Both packages were returned to sender. The occupant confirmed that the registered mail had been refused.

Section 90 of the Act deems a party to be served with documents five days after mailing so that a party cannot avoid service by refusing to accept or pick up their mail.

In light of the above circumstances, I deemed the tenant to be sufficiently served with the landlord’s hearing documents. I proceeded to hear the landlord’s Application and considered the evidence he submitted. The relevant documents were described to the tenant during the hearing.

Tenant’s Application

The original Application filed by the tenant on April 7, 2014 indicated the tenant was seeking emergency repairs as well as “allow tenant more time to make an application to cancel a Notice to End Tenancy”. The Application was amended on April 28, 2014 to tick the boxes that correspond to cancellation of a 10 Day Notice to End Tenancy and a 1 Month Notices to End

Tenancy. The Application was amended again on May 12, 2014 to seek monetary compensation.

I noted that the tenant indicated that the 1 Month Notice was received on March 28, 2014 and the 10 Day Notice was received April 2, 2014 yet the tenant did not amend the Application to indicate she was seeking cancellation of a 10 Day Notice and a 1 Month Notice until April 28, 2014 which is after the time limit for disputing the Notices. The tenant submitted that in filing the Application on April 7, 2014 the intention was to dispute the Notices to End Tenancy. I found the tenant's explanation reasonable and that it appears she indicated the wrong box on the Application. I also noted that the landlord had provided evidence in support of upholding the Notices to End Tenancy and in doing so I found that he was prepared to prove their validity. As such, I found the landlord would not be prejudiced by an amendment to the April 7, 2014 Application. Therefore, I amended the tenant's Application filed on April 7, 2014 to indicate a request to cancel a 10 Day Notice and a 1 Month Notice and in doing so, the tenant was within the time limit for disputing the Notices to End Tenancy.

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which was the request to cancel the Notices to End Tenancy. I find that not all the issues identified on this Application for Dispute Resolution are sufficiently related to be Notices to End Tenancy under dispute. Therefore, I have only considered the tenant's request to cancel the Notices to End Tenancy and I dismiss the balance of tenant's Application with leave to reapply.

Issue(s) to be Decided

1. Should the 1 Month Notice to end Tenancy be upheld or cancelled?
2. Should the 10 Day Notice to End Tenancy be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession?
4. Is it necessary to issue any other orders upon the parties?

Background and Evidence

The original tenancy agreement commenced November 1, 2013 and required the tenant to pay rent of \$1,200.00 on the 1st day of every month. The second tenancy agreement commenced March 1, 2014 and required the tenant to pay \$1,300.00 on the 1st day of every month.

1 Month Notice to End Tenancy for Cause

The landlord issued a 1 Month Notice to End Tenancy for Cause (1 Month Notice) on March 28, 2014 and sent it to the tenant via registered mail. The 1 Month Notice indicates the reason for ending the tenancy is due to "repeated late payment of rent". The landlord provided copies of his bank records to show that rent for December 2013; January 2014; February 2014 and March 2014 was deposited after the 1st of the month.

Both the tenant and landlord submitted that the tenant contacted the landlord about paying rent late for January 2014 and the landlord was understanding about the tenant's financial position at that time and did not indicate it would be a problem.

With respect to the other months, the tenant explained that initially she had offered to give the landlord post-dated rent cheques but that he suggested direct deposit into his bank account which she has been doing to pay the rent. The tenant submitted that the landlord's bank in the town of this property is not open on the weekends and since the 1st fell on a weekend she deposited the rent on the very next business day. I confirmed that the 1st of December 2013, February 2014 and March 2014 did fall on a weekend. The landlord explained that he does not reside in the town where the rental unit is located and that he is unaware as to whether his bank is open on weekends in that town.

Both parties provided consistent testimony that the rent for April and May 2014 was paid in full and on time. The landlord attributed this to the fact he had issued an eviction notice for repeated late payment of rent. The tenant explained that this is because the 1st fell on a business day for those months.

10 Day Notice to End Tenancy for Unpaid Rent

The tenant withheld \$100.00 from the rent due for February 2014. On April 2, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) indicating \$100.00 was outstanding for February 2014. The landlord served the tenant with the 10 Day Notice in person.

Both parties provided consistent testimony that the tenant requested the landlord provide salt for the icy sidewalks and the landlord authorized the tenant to purchase salt and deduct it from rent. The dispute appears to have arisen because multiple bags of salt were purchased at a cost of approximately \$84.00 which the landlord did not anticipate and the landlord was not provided receipts when he asked for them. The tenant acknowledged that a receipt was not obtained or provided.

The tenant submitted that the remainder of the \$100.00 deduction was for the purchase of a door knob to their daughter's bedroom that had become stuck; thereby, locking the occupants out of their daughter's bedroom. The tenant considered this an emergency repair since it was urgent that access be regained to this room and because the landlord did not respond to multiple phone calls to have this repaired.

The landlord denied receiving any phone calls about this issue and stated there were no messages left on his answering machine. Rather, the first he learned of an issue with the door knob was when he noticed the shortfall in rent in February 2014 and upon contacting the tenant was informed about it. The landlord asked for the receipt for the door knob which was never provided to him. The tenant acknowledged that the receipt was not provided to the landlord but claimed that it is available.

The landlord explained that he waited two months before issuing the 10 Day Notice to provide the tenant an opportunity to provide the receipts he requested and when those were not forthcoming he had had enough and issued the 10 Day Notice. The occupant suggested the Notices to End Tenancy were issued in retaliation for requesting the landlord make repairs to the property.

The occupant wanted to make submissions with respect to repair issues and became quite agitated and used inappropriate name-calling tactics in doing so. I instructed the occupant to refrain from making further outbursts. The landlord submitted that he had attended the property in order to deal with repair issues but that the behaviour of the occupant toward him was aggressive so he left the property. The parties were informed that I would not be dealing with repair issues during this hearing but that if the tenancy were to continue the landlord would be expected to address repair issues in a timely manner and that the occupant must not in any way interfere with such efforts. Given the occupant's apparent inability or unwillingness to conduct himself appropriately during the hearing, I strongly encouraged the landlord and the female tenant to deal with each other with respect to tenancy related matters in the future. I also cautioned the tenant and the occupant that the tenant is responsible for the behaviour of all persons she permits on the property and that the conduct of those persons may jeopardize her tenancy.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

1 Month Notice to End Tenancy

Section 47 of the Act provides that a landlord may end a tenancy where a tenant is repeatedly late paying rent. Residential Tenancy Policy Guidelines provide that there must be at least three late payments to be considered repeated late. The landlord has put forward evidence that deposits were made after the 1st of the month on four occasions; however, three of those months were under the former tenancy. When the landlord entered into a new tenancy agreement with the tenant there had already been three months of late payments if I accept his position. I find it reasonable to expect that had the landlord intended to end the tenancy for repeated late payment he would not have entered into a new tenancy with the tenant starting March 1, 2014. Accordingly, I find that in entering into a new tenancy agreement the landlord is estopped from pointing to payments under the former tenancy in determining the number of times the tenant has paid rent late. Therefore, the only month where there is a question as to whether the rent was paid late is the month of March 2014 and since this is only one month, that is insufficient to end the tenancy for repeated late payment of rent.

In light of the above, I cancel the 1 Month Notice to End Tenancy for Cause.

In an effort to avoid future disputes about this issue, I suggest the landlord determine whether his bank is open on weekends in the town where the residential property is located. If in fact it is closed on weekends, the landlord's options are to accept that deposits made on the next business day are on time or accept post-dated cheques from the tenant as she initially offered.

10 Day Notice to End Tenancy

Section 26 of the Act provides that a tenant must pay rent that is due under the tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right under the Act to make deductions from rent. The circumstances when a tenant has a legal right to make deductions from rent are very limited. It is permissible to make deductions from where a landlord is agreeable to the deduction. The cost of emergency repairs is also deductible provided all criteria of section 33 are met.

In the case before me, there was authorization to deduct monies from rent for the purchase of salt; however, it appears the landlord and tenant did not discuss how much salt would be purchased or the anticipated cost of the purchase. Given the sizeable deduction for salt I find the landlord's request to see the receipt was a reasonable one. Since both parties failed to adequately communicate all the terms of this particular agreement I do not end the tenancy for the deduction made but I do order the tenant to pay the landlord the \$84.00 deducted since she cannot produce a receipt showing how much was purchased and its cost.

Section 33 of the Act provides for emergency repairs. To be considered an emergency repair, the need for the repair must be urgent and must be for the repair of one of the following:

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems,

I find that part (iv) above pertains to the exterior entry door(s) and not an interior door within the rental unit. While I appreciate the tenant may have had to break or dismantle the old door knob to gain entry to the bedroom, the purchase and installation of a new door knob is not an emergency repair.

In circumstances where a tenant has in fact made an emergency repair, the tenant must provide the landlord with a written account of the expenditure, including receipts, in order to be entitled to reimbursement. Even if the tenant considered the door knob an emergency repair, the receipt was not given to the landlord, and the tenant was not entitled to make a deduction. Again, I find the landlord's request for the receipt was very reasonable in the circumstances.

Although I have found that the tenant was not entitled to make a deduction for the new door knob since it was not an emergency repair as defined under the Act, section 66 of the Act permits me to extend a time limit for paying rent where: "the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs..."

In keeping with section 66 of the Act, I give the tenant an extension to pay the balance of \$16.00 deducted from rent for the door knob purchase. Therefore, I do not end the tenancy for this deduction at this time, but I order the tenant to pay the landlord \$16.00 forthwith.

In total, the tenant is ordered to pay the landlord \$100.00. I order that this payment be made within five days of receiving this decision. The tenant shall be deemed to have received this decision five days after it is issued. Therefore, the tenant shall have 10 days from the date of this decision to pay the landlord \$100.00. Failure to do so shall be grounds for the landlord to issue another 10 Day Notice to End Tenancy for Unpaid Rent and/or a 1 Month Notice for failure to comply with the order of the Director.

Each party shall pay their own costs for filing their respective applications.

Conclusion

The Notices to End Tenancy are set aside and the tenancy continues. As such, the landlord is expected to deal with repair issues in a timely manner.

The male occupant does not have standing as a tenant. Given the behaviour of the male occupant during the hearing it is strongly suggested that the landlord and the female tenant deal with each other concerning tenancy related matters in the future. The tenant and occupant were cautioned that conduct of the occupant may jeopardize the tenant's tenancy.

The tenant is ordered to pay the landlord \$100.00 within five days of receiving this decision which will be deemed to be received five days after it is issued. Thus, the tenant has up to 10 days from the date of this decision is issued to pay \$100.00 to the landlord. Failure to make this payment shall be grounds for the landlord to issue another 10 Day Notice to End Tenancy for Unpaid Rent and/or a 1 Month Notice to End Tenancy for Cause for failure to comply with an order of the Director.

The tenant's request for repair orders and compensation were severed from this Application for Dispute Resolution and dismissed with leave to reapply.

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: May 30, 2014

Residential Tenancy Branch

