



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes *OPR, MNR, CNR, CNC, FF.*

Introduction

This hearing was originally scheduled to deal with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant seeks to cancel a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant also seeks an Order to force the landlord to comply with the Act and monetary compensation for damages and loss.

Both parties were present at the hearing.

At the outset of the hearing, it was revealed that the landlord had also made an application scheduled to be heard on June 27, 2014 seeking an order of possession pursuant to section 55 of the Act as well as a monetary order for rent owed, pursuant to Section 67 of the Act.

I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Preliminary Issues

Join Landlord's and Tenant's Applications to be Heard Together

This hearing was scheduled to hear the tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and for monetary compensation but when it came to my attention that the landlord's application was to be heard on May 27, 2014 dealing with an request for an Order of Possession based on the same Ten Day Notice to End Tenancy for Unpaid Rent, I felt it necessary to consider joining the two applications to be heard jointly.

In accordance with Rule 2.2 of the Residential Tenancy Rules of Procedure, the Arbitrator presiding over the hearing may join separate applications to be heard

at the same time. In determining whether to join Applications for Dispute Resolution, the Director must consider the following criteria:

- a) whether the applications pertain to the same residential property, or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of law in resolving each application.

Given that both the landlord's and the tenant's applications deal with the same Ten Day Notice to End Tenancy for Unpaid Rent and claims for monetary compensation, I order that these two applications be joined to be heard together today as they pertain to the same dispute issue.

Sever Monetary Claims

Sever Landlord's Monetary Claim

In regard to the portion of the landlord's cross application relating to their monetary claim, I find that under Residential Tenancy Rules of Procedure, Rule 2.3 if the arbitrator determines that it is appropriate to do so in the course of the dispute resolution proceeding, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the landlord's monetary claim under section 67 of the Act is separate from the other portion of the landlord's cross application that pertains to the more pressing matter of whether or not this tenancy should continue or be terminated for unpaid rent, pursuant to section 46 and 55 of the Act.

Accordingly, I find that the monetary portion of the landlord's cross application should be severed and dealt with separately through an application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply. However, a determination will be made on the remainder of the landlord's cross application in regard to the Order of Possession based on the 10-Day Notice to End the tenancy.

Sever Tenant's Monetary Claim

With respect to the tenant's monetary claim, I find that Residential Tenancy Rules of Procedure, Rule 2.3 applies to this situation as well. I find that the most pressing matter in the tenant's application is the request to cancel the 10-Day Notice to End Tenancy for Landlord Use. Because the tenant's claim for damages was made under section 67 of the Act, I find that this part of the application is distinct and separate from the tenant's request that the 10-Day Notice to End Tenancy should be cancelled.

Accordingly, I find that the monetary portion of the tenant's application and the other request in the tenant's application that the landlord be forced to comply with the Act, must be severed. I find that the monetary claim must be dealt with separately through an application under section 67 of the Act.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent or should the Notice be cancelled as requested by the tenant?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order cancelling the Notice to End Tenancy for Unpaid Rent?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on October 21, 2012. The current rent is \$1,300.00 per month payable on the 1st day of each month and no security deposit was paid.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was also in evidence showing that the tenant is in arrears as of May 2, 2014, for \$3,741.38. The landlord testified that the tenant fell into arrears over time. The landlord testified that, during 2014, the tenant paid a total of \$5,600.00 towards the \$6,500.00 rent owed for these past 6 months. The landlord pointed out that the tenant also owed rental prior to 2014 and is in arrears for utilities as well.

The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant on May 2, 2014 in person. The landlord testified that the tenant has not paid the arrears, nor has the tenant vacated pursuant to the Ten Day Notice and the landlord is seeking a an Order of Possession.

The tenant's testimony confirmed that the tenant was in arrears for some amount of rent at the time the Ten Day Notice to End Tenancy was issued and that the tenant has not paid all of the arrears in full within 5 days to cancel the Notice. The tenant submitted copies of receipts for payment that confirm they paid a total of \$5,600.00 towards rent during the first 6 months of 2014.

The tenant is requesting that the Ten-Day Notice be cancelled.

Analysis:

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that there is no dispute about the fact that the tenant owed arrears for rent and failed to pay the rent within 5 days of receiving the Notice. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid and the Notice was therefore still in effect.

I find that the Notice for unpaid rent is supported under the Act and the criteria for ending the tenancy under section 46 of the Act was met.

Therefore I find that the Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

However, as the monetary claims of both the landlord and the tenant have been severed and dismissed with leave, I make no findings with respect to the amount of rental arrears owed by the tenant. I make no findings with respect to any of the tenant's monetary claims against the landlord.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I order that the landlord is entitled to be reimbursed the cost of this application in the amount of \$50.00 and I hereby grant a monetary order in favour of the landlord for that

amount. This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court and enforced as an order of that court.

The tenant's application to cancel the 10-Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

The portion of the landlord's application seeking monetary compensation is dismissed with leave to reapply and the portion of the tenant's application seeking monetary compensation is also dismissed with leave to reapply.

Conclusion

The landlord is successful in the application and is granted an Order of Possession. The tenant's application seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent cancelled is dismissed without leave. The portion of the landlord's application respecting landlord's monetary claim and the portion the tenant's application respecting the tenant's monetary claim are both severed 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: June 25, 2014

Residential Tenancy Branch

