



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF
 CNR, MNDC, MNR, MT, LAT, O, FF

Introduction

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

The Landlord applied for an Order of Possession for unpaid rent and for cause, as well as a Monetary Order for unpaid rent or utilities and to recover the filing fee.

The Tenant applied: to cancel the notice to end tenancy for unpaid rent or utilities; for more time to make the Application to cancel the notice; for the cost of emergency repairs; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to authorize the Tenant to change locks to the rental unit; to recover the filing fee; and for ‘Other’ issues of which none were identified during the hearing.

The Landlord and Tenant appeared for the hearing and both parties provided affirmed testimony and copies of the notices to end tenancy prior to the hearing.

Preliminary Issues

At the start of the hearing, the Tenant indicated that he was recording the hearing using an audio device. The Tenant was asked to turn the device off as recording of the proceedings is not permitted under Rule 9.1 of the Rules of Procedure (the “Rules”). The Tenant was informed of the procedure, as outlined in 9.2 of the Rules, for having an official recording made of the hearing. The Tenant testified that the audio device had been turned off before the proceedings continued.

The Tenant testified that he had served the Landlord with a copy of his Application and Notice of Hearing documents (the “hearing documents”) by registered mail on May 19,

2014 after being issued with the documents on May 15, 2014. The Landlord confirmed receipt of the Tenant's hearing documents.

The Landlord testified that he had served his hearing documents to the Tenant's rental unit by registered mail which was returned as unclaimed. The Tenant submitted that the his rental unit address is not his mailing address as his mailing address is a postal box number as detailed on his Application. However, the Landlord did not receive the Tenant's Application which detailed his postal box mailing address until the Landlord had made his Application.

The Tenant was asked whether he had provided this address to the Landlord during the tenancy. The Tenant replied that the Landlord never asked him for it and knows that he does not receive mail to the rental unit address. The Tenant did confirm that he received a copy of the first page of the Landlord's Application which had been posted to his door.

Section 59(3) of the Act requires that hearing documents must be served to the other party within three days of being issued with the documents by the Residential Tenancy Branch.

However, the Tenant served his hearing documents to the Landlord outside of this time limit. However, the Landlord confirmed receipt of the Tenant's hearing documents, and I therefore find that they have been sufficiently served under Section 71(2) (b) of the Act without any prejudice to the Landlord.

In relation to the Landlord's hearing documents, I find that it was the Tenant's responsibility to inform the Landlord if there was to be a change in the Tenant's mailing address. It is reasonable for a Landlord to mail documents to the Tenant's place of residence and it is not the responsibility for a Landlord to continually ask a Tenant if their mailing address has changed. However, I accept that the Tenant had not seen the Landlord's Application and I decided to only consider the Landlord's Application for an Order of Possession, for which the Landlord also made a verbal request for during the proceedings, pursuant to Section 55 of the Act.

Under 2.3 of the Rules, an arbitrator may determine in the course of the dispute resolution proceeding, if it is appropriate to do so, to dismiss or adjourn any unrelated disputes contained in a single Application.

As a result, I have determined that I will not deal with the Tenant's monetary Application as this relates to monetary compensation for the repair of a fence approximately two to three years ago which the Tenant claims is an emergency repair. This is not related to

the Tenant's Application to cancel the notice for unpaid rent and therefore, I dismiss this monetary portion of the Tenant's Application with leave to re-apply.

Issue(s) to be Decided

While both parties provided a number of submissions throughout this hearing, I have only referred to the relevant evidence in this decision.

- Is the Tenant entitled to cancel the notice to end tenancy for unpaid rent or utilities?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that this tenancy was a month to month tenancy which started on December 15, 2004 with both parties signing a written tenancy agreement; however this was not provided as written evidence for this hearing.

The Tenant testified that this was not correct and that the tenancy started on December 19, 2004 for a fixed term of ten years.

The parties agreed that rent was payable by the Tenant in the amount of \$1,600.00 and at the start of the tenancy this amount was payable on the seventh day of each month; however, the parties agreed that in the summer of 2013, this changed to the requirement of the Tenant to pay rent of the first day of each month.

Both parties also agreed that the Landlord holds \$1,600.00 in the form of a security and pet damage deposit which was paid at the start of the tenancy in December, 2004.

The Landlord testified that on March 1, 2014 the Tenant failed to pay rent in the amount of \$1,600.00. As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on March 12, 2014. A copy of the Notice was provided as evidence and shows \$1,600.00 in unpaid rent due on March 1, 2014. The Landlord explained that the Tenant paid the full amount of rent on March 18, 2014.

The Tenant then failed to pay rent on April 1, 2014. The Landlord testified that on May 1, 2014, the Tenant paid him \$800.00 which he applied to April's rent; however, the Tenant failed to pay rent for May, 2014. As a result, the Landlord served the Tenant with

two Notices, both dated May 2, 2014, one relating to \$800.00 for outstanding April, 2014 rent and one for \$1,600.00 for unpaid May, 2014 rent.

The Landlord testified that the Tenant has failed to pay rent for June and July, 2014 rent for which he has been served Notices relating to these months; the one relating to June, 2014 was provided as evidence for this hearing.

The Tenant testified that in March, 2014 he lost his business and was unable to make his March, 2014 rent payment which was due on March 1, 2014. The Tenant testified that he was hounded and harassed by the Landlord and as a result, on March 18, 2014 the Tenant explained that he managed to get the money together for March, 2014 rent in order to make payment.

The Tenant explained that he knew he was not going to be able to make his next rent payment and that the Landlord gave him 'stay' for April, 2014 rent. The Tenant was asked to elaborate on this and explained that the Landlord said that "he could pay his April, 2014 rent at a later date"; however, no specific date was agreed upon by the parties.

The Tenant testified that the Landlord then again harassed him on April 30, 2014 by phone in the middle of the night for April, 2014 rent. As a result, the Tenant managed to get together \$800.00 in funds and testified that he made this payment on May 1, 2014 but that the payment related to May, 2014 rent as he had been given a 'stay' on the April, 2014 rent by the Landlord. However, the Landlord then served the Tenant with two individual Notices for the unpaid rent relating to April and May, 2014. The Tenant submits that he will pay rent for April, 2014 when he can get the money. However, the Tenant acknowledged that May, 2014 rent is still unpaid.

In relation to the Landlord's testimony about non payment of rent for June and July, 2014, the Tenant testified that he was unable to pay rent on June 1, 2014 because the banks were closed and that the Landlord had sent him a text message stating that the rental unit had been sold and therefore he did not know who to pay rent to. The Tenant testified that he had the June and July, 2014 rent to give to the Landlord but was not sure who the Landlord was now as the property had been sold.

Analysis

Both parties had supplied copies of the Notices referred to during the hearing and I find that the Notices were completed on the correct form and contained the correct content as required by Section 52 of the Act.

While the parties disagreed on some of the details with regards to the nature of the tenancy, I find that both parties were in agreement that a tenancy had been established where rent at the time the Landlord issued the Notices was payable in the amount of \$1,600.00 on the first day of each month. Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement unless the Tenant has a right under the Act to deduct all or a portion of the rent.

The Tenant relies on the fact that he had been given verbal permission by the Landlord to not pay his April, 2014 rent as the Landlord gave him a break on it; however, it was made clear by both parties during the hearing that the understanding was that April, 2014 rent would still have to be paid but a date for payment had not been specified. As a result, I find that when the Landlord issued the Notice on May 2, 2014 to the Tenant for the \$800.00 of outstanding rent due in April, 2014 this put the Tenant on notice that the remainder of the April, 2014 rent was payable within the five days allowed under the Notice and the Act.

The Tenant claims that he paid the \$800.00 for May, 2014 rent and not for April, 2014 rent as he had permission from the Landlord to not pay for this month. However, although usual accounting practices would apply payments to the oldest debt first and then later debts, I find that what is relevant is not what month the parties thought the \$800.00 was to be applied to, but that rent in the amount of \$800.00 was **unpaid** for either April or May, 2014.

If I accept the Tenant's submission that he did not have to pay rent for April, 2014 there would have still been a requirement for him to pay rent for May, 2014 and according to the Tenant there was still \$800.00 unpaid for May, 2014.

In relation to the unpaid rent for June and July, 2014 I do not accept the Tenant's submission that this was not payable because the banks were closed. A Tenant has the option to pay rent **before** it is due if they do not have the means to pay it on the day it is due, for example, if the banks are closed on a weekend or a statutory holiday.

I also find that the Tenant's submission that he did not pay rent for June and July, 2014 because the Landlord claimed to have sold the property is not authority under the Act to withhold rent. A Landlord is able to put their rental unit up for sale at anytime during the tenancy and if the property sells then the Landlord is required to give written instructions to the Tenant in relation to the impact the sale will have on the tenancy and if there is a change in ownership and the new owner continues the tenancy under the Act, the Tenant would have to be given written instructions in relation to who rent is payable to; until this happens a Tenant is still required to pay rent to their Landlord

under the agreement. Furthermore, I find that if the Tenant had rent for June and July, 2014 this could have been paid to the Landlord towards satisfying the outstanding debt for April and May, 2014 rent, which the Tenant did not do.

In this case, I find that the Tenant has simply failed to pay the outstanding rent to the Landlord since being issued with the two Notices on May 2, 2014 and had no authority under the Act to make deductions for May, June and July, 2014 rent. As a result, the Landlord's request for an Order of Possession of the rental unit is granted under Section 55 of the Act.

As the Landlord had been successful in obtaining an Order of Possession for unpaid rent, I did not hear any evidence from the parties relating to the 1 Month Notice to End Tenancy for repeatedly late rent payments; however, I draw the attention of both parties to Policy Guideline 38 to the Act which explains that three late payments is the minimum number sufficient to justify a notice for repeatedly late rent payments.

Conclusion

For the reasons set out above, I **dismiss** the Tenant's Application to cancel the notice to end tenancy, to recover the filing fee, and to authorise the Tenant to change the locks as the tenancy will be ending. The Tenant's Application for a Monetary Order is dismissed **with** leave to re-apply.

For the reasons set out above, I grant the Landlord an Order of Possession which is effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite. The Landlord's Application for a Monetary Order is dismissed **with** leave to re-apply.

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: July 09, 2014

Residential Tenancy Branch

