



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The Landlords applied for an Order of Possession for unpaid rent and for cause. The Landlords also applied for a Monetary Order for unpaid rent, damage to the rental unit, money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), to keep the Tenant’s security deposit, and recovery of the filing fee.

The Tenant applied to cancel and for more time to cancel both notices to end tenancy and for the Landlord to comply with the Act, regulation or tenancy agreement.

One of the Landlords appeared for the hearing as well as the Tenant. Both parties provided affirmed testimony during the hearing as well as written evidence prior to the hearing.

No issues were raised by the parties in relation to the service of the documents and evidence for this hearing under 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 determined during the hearing that I would not deal with all the dispute issues placed on the Tenant’s and Landlords’ 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 notices

to end tenancy and the Landlord's monetary 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.

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 and utilities be cancelled?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on February 1, 2014 on a month to month basis. A written tenancy agreement was completed and signed by the parties which required rent to be paid by the Tenant to the Landlord on the first day of each month in the amount of \$1,250.00. The Tenant paid \$625.00 as a security deposit to the Landlord on January 17, 2014.

The Landlord testified that the Tenant had been habitually late paying rent since the beginning of the tenancy and explained that the Tenant failed to pay rent on July 1, 2014. The Landlord testified that the Tenant provided her with a written letter underneath her door which explained that she would not be able to pay rent on time due to her not having the funds payable by a third party organisation who was assisting the Tenant with rent.

The Landlord explained that the Tenant had unauthorised occupants residing with her and on July 6, 2014 she only received half of the rent payable under the agreement in the amount of \$750.00. As a result, that afternoon, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); this was also served to the Tenant by registered mail. The 10 Day Notice was

provided as evidence and shows that the Tenant failed to pay rent in the amount of \$750.00 as well as unpaid utilities for July, 2014.

The Landlord explained that she made her Application for an Order of Possession but the third party organisation had made payment to her for all of the unpaid rent. However, some of the utilities were still outstanding.

The Landlord testified that the Tenant failed to pay rent again on August 1, 2014 in the amount of \$1,250.00. As a result, the Landlord personally served the Tenant with another 10 Day Notice, which was provided in evidence, with an effective vacancy date of August 14, 2014 due to unpaid rent due on August 1, 2014 and unpaid utilities due on July 1, 2014.

The Tenant confirmed receipt of both 10 Day Notices and testified that she had not paid full rent on time in July, 2014 because of a change in the date she received her monthly payment from the third party organisation. In relation to the unpaid rent for August, 2014, the Tenant explained that the Residential Tenancy Branch told her to withhold her rent until this hearing. The Tenant further explained that she had paid her portion of the rent but her daughter who was residing with her had not.

The Tenant and Landlord agreed in the hearing that the total amount of rent arrears outstanding to date is \$535.00. However, the Landlord and Tenant did not agree on the amount of utilities that were outstanding but agreed to work with each other on determining the exact amount that was outstanding after this hearing.

Analysis

In my analysis of the 10 Day Notices, I find the contents and the manner in which they were served to the Tenant complied with 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 Notices. 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 first 10 Day Notice on July 6, 2014 and failed to pay the full amount of rent due under the tenancy agreement within the five 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. The Tenant made the Application outside of the five day time limit and did not provide sufficient evidence that there were exceptional circumstances that led to her inability to make the Application within the time limits imposed by the Act.

However, I find that the Tenant did make **full** payment for July, 2014 rent, and in the absence of any written evidence from the Landlord, the payment was accepted and the tenancy was effectively re-instated as there was no written 30 day demand letter given to the Tenant by the Landlord as required by Section 46(6) of the Act.

However, when the Tenant was served with the 10 Day Notice for non payment of August, 2014 rent, while the Tenant amended her Application to dispute this Notice, I find that the Tenant had no authority under the Act to withhold rent for August, 2014.

A Tenant is not absolved from paying rent payable under a tenancy agreement based on a change of circumstances of a third party; neither can a Tenant rely on the fact that they have paid their share of the rent as a Co-tenant because all Co-Tenants are jointly and severally responsible for paying **all of the** rent. I do not accept the Tenant's submission that the Residential Tenancy Branch instructed her not to pay rent until this hearing was decided upon.

Therefore, I find that the Tenant pursued a course of action in not paying 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 for August, 2014 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 for August, 2014 has now passed.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlords 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.

As the Landlord was successful in upholding the 10 Day Notice, I did not consider any of the evidence submitted by the parties in relation to the 1 Month Notice to End Tenancy for Cause because this notice is now moot as the tenancy is ending under the 10 Day Notice.

Based on the mutual agreement of the parties during the hearing that there is a balance of unpaid rent in the amount of \$535.00 payable by the Tenant, I award this amount to the Landlord. I also award the Landlord the \$50.00 filing fee for the cost of making the Application pursuant to Section 72(2) (b) of the Act.

Therefore, the total amount awarded to the Landlord is **\$585.00**. As the Landlord already holds \$625.00 in the Tenant's security deposit, I authorize the Landlord to achieve the amount awarded by deducting this from the Tenant's security deposit.

The rights and obligations to the return of the balance of the Tenant's security deposit are still in effect pursuant to Section 38 of the Act.

The remainder of Landlord's monetary claim for unpaid utilities, damage to the rental suite and money owed for compensation under the Act is dismissed with leave to re-apply.

As the tenancy will be ending shortly, the Tenant's Application is dismissed in its entirety without 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: August 19, 2014

Residential Tenancy Branch

