



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, CNC, MNDC, RR, FF, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy; to cancel two notices to end tenancy; to an order to reduce rent; and to a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant and the landlord.

At the outset of the hearing I noted the tenants received both notices to end tenancy on September 22, 2014 and filed their Application for Dispute Resolution on September 5, 2014. I find the tenants filed their Application within 3 days of receipt of both Notices and as such they have filed their Application within the required timelines and there is no need to be granted additional time. I amend the tenants' Application to exclude the matter of more additional time to apply to cancel a notice to end tenancy.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenants have applied to cancel two notices to end tenancy and orders for reduced rent and a monetary order for compensation, I find that the additional orders sought by the tenants are unrelated to the issues of the notices to end tenancy.

As such, I dismiss the portion of the tenants' Application seeking orders for a rent reduction and for compensation for time spend dealing with disputes with landlord over water supply, with leave to reapply at a future date.

During the hearing, the landlord did not verbally request an order of possession should the tenants be unsuccessful in their Application.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute

Resolution, pursuant to Sections 46, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on March 1, 2014 as a month to month tenancy for the monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid.

The tenant submitted into evidence the following documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on September 17, 2014 with an effective vacancy date of October 22, 2014 citing the tenants are repeatedly late paying rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 17, 2014 with an effective date of October 4, 2014 citing the tenants had failed to pay the full rent of \$600.00 due on September 1, 2014 (\$500.00 paid and \$100.00 unpaid).

The parties agreed the tenants did not pay the full rent on the day that it was due for the months of May and September 2014. They agreed the May 2014 rent was paid on May 12, 2014 and that \$500.00 was paid on September 1, 2014 but \$100.00 was withheld until it was paid on September 29, 2014.

The tenant submits that they withheld this amount originally because of the water problems they were having. The parties agree that at the start of the tenancy the landlord had informed the tenants that while there was water running into the house it was not to be used for drinking water.

The tenants submit that the water started coming in coloured and when they had the local health authority check into it they were advised that they should not use the water supplied to the rental unit for anything. The parties agree that in order to have potable water the landlord would have to pay several thousand dollars for a new water supply.

The tenants submit that as a result they spent additional monies on water to use and they withheld this amount from the September 2014 rent as they understood the landlord was required to provide them with water. The tenant submits that they did not undertake any repairs to the water lines or supplies.

The parties also agree that rent for the month of June 2014 was paid on June 3, 2014. The tenant submits that this does not count as a late payment of rent because they had obtained the landlord's approval to be late prior to June 1, 2014.

The tenant submits there was a problem with their paycheque and that they contacted the landlord on May 30, 2014 advising the landlord of this and their inability to pay rent

until the following week. They state the landlord agreed to this. The tenant submits that if the landlord had not agreed they would have made an attempt to pay the rent on time.

Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As per the testimony of both parties I accept that the tenants were late paying rent for the month of May 2014 and this counts as one late payment of rent.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

If after following the requirements set out in Section 33 the tenants then undertook emergency repairs and incurred costs they could provide the receipts for the costs to the landlord for reimbursement. If the landlord failed to reimburse the tenants for these documented costs the tenants would be allowed to withhold the portions paid for repairs from rent payments.

In the case before me, while I accept the tenants may have purchased water as a result of problems with the current water system, I find that the water purchase does not include any actual emergency repair work nor did the tenants provide the landlord with any receipts. As such, the tenants did not have authority under the *Act* to withhold any amount of rent for water purchases and I find the withholding of a portion of September 2014 rent counts as a second late payment of rent.

As to the payment of rent for the month of June 2014, despite the landlord's agreement that she would accept rent late the fact remains that the agreement between the parties was that rent was due on the 1st of each month and the tenants are obligated to ensure the landlord has the payment on the date agreed upon.

I find that when a landlord is approached by a tenant who indicates that they cannot pay their rent on the day that it is due because of their inability to pay and the landlord

“agrees” it does not constitute a change in the tenancy agreement but rather acknowledgement of the tenants inability to pay on the date it is required. As such, I find that this counts as a 3rd time that rent was paid late.

Section 47 of the *Act* allows a landlord to end a tenancy by giving the tenants notice to end the tenancy if the tenant is repeatedly late paying rent. A notice issued under this section must end the tenancy effective on a date that is not earlier than a month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 38 states that 3 late payments are the minimum number sufficient to justify a notice under this provision. The Guideline goes on to say that it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

As I have found that the tenants were late paying rent on at least 3 occasions I find the landlord has established cause to end the tenancy pursuant to Section 47 of the *Act*.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

A notice given under Section 47 of the *Act* requires that it be effective no earlier than one month after the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. In the case before me, I find the effective date to be amended to October 31, 2014.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

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: November 13, 2014

Residential Tenancy Branch

