



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OPR, MNR, FF, O

Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent dated October 18, 2014 and for a monetary award for a share of moving expenses and rent. By evidentiary documents filed November 14th the tenants apparently claim further damages up to the \$25,000.00 jurisdiction of this forum for landlord conduct alleged to be in the nature of harassment.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and a monetary award for two months' unpaid rent.

At the start of the hearing it was indicated that the tenants' claim for damages is unrelated to the Notice cancellation claim for which they had been given an expedited hearing date and that time today would likely not permit the hearing of all the evidence related to that claim in addition to the hearing related to the urgent issue of whether or not the tenancy continues and whether rent is owed. In addition, the tenants' material in support of the damages claim has not particularize or detailed what events lead to the claim of harassment with the detail required for the landlord to make a reasonable response. In these circumstances at the hearing the tenants' claim for damages was severed from the application and it is dismissed with leave to re-apply.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that the ten day Notice is a valid Notice or that the landlord is owed rent?

Background and Evidence

The rental unit is a three bedroom suite on the upper portion of a house. The landlord rents the lower portion to others.

This tenancy started in June 2015. There is a written tenancy agreement. It shows that only the applicant Mr. D. is the tenant. The other applicant Ms. K.M. is, therefore, an occupant, not a party to the tenancy agreement. The monthly rent is \$1300.00. The agreement provides it is due on the 15th of each month. The agreement states the tenancy is for a fixed term to December 15, 2014 and that the tenant must vacate the premises at that time. That portion of the tenancy agreement has been initialed by the parties to it.

The tenant intends to vacate the rental unit by December 15th. He does not dispute that he owes \$1300.00 for October rent and \$1300.00 for November rent. He disputes the ten day Notice because he opposes an earlier end to the tenancy than December 15th.

The tenant testifies that the landlord served him with only the first page of the ten day Notice, a two page document. The tenant says that in August he'd reached an agreement with the landlord's partner to pay \$650.00 twice a month instead of \$1300.00 on the fifteenth of each month. He says that on October 15th the landlord ignored this arrangement and attempted to deposit an "old" post dated cheque for \$1300.00. It was not honoured because the tenant had cancelled it.

The landlord says he served the tenant with both pages of the Notice, printed off his printer. He says the \$650.00 twice a month payment scheme was to only be for two months.

Analysis

In regard to the Notice, I find the tenant's evidence more persuasive. The tenant says the "second page" of the two pages he received was actually the original Proof of Service document. He filed a copy of that document; a document he would not normally have in his possession to file. I find it most likely that the landlord accidentally served the tenant with the first page of the ten day Notice and with the Proof of Service document instead of the second page of the Notice. A landlord intending to evict a tenant must follow the rules strictly. He must serve both pages of a two page Notice.

I find that the tenant was not served with a proper and complete ten day Notice and I hereby cancel it and set it aside.

I need not determine whether the date for payment of rent was altered. The amount outstanding for rent is not in dispute.

The tenant argues that landlord has varying plans for the premises: personal use, renovation, destruction.... In my view it does not matter what the landlord intends to do with the premises. He does not need a reason to evict the tenant to compel him to leave by December 15th. The parties have agreed that is the end date and that the tenant must leave. They have not made any further agreement that might alter that outcome.

Conclusion

I grant the landlord an order of possession effective at one o'clock in the afternoon on December 15, 2014. I grant the landlord a monetary award of \$2600.00 as claimed, plus the \$50.00 filing fee for this application. I authorize the landlord to retain the \$650.00 security deposit in reduction of the amount award. There will be a monetary order against the sole tenant Mr. R.D. for the remainder of \$2000.00.

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: December 01, 2014

Residential Tenancy Branch

