



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' Application: MNR, MNSD, FF, O
Tenant's Application: MNDC, ERP, LRE, MNDC, MNSD, O, OLC,
RP, RPP

Introduction

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

The Landlords applied for an Order of Possession under 'Other' issues, a Monetary Order for unpaid rent, to keep the Tenant's security deposit and to recover the filing fee.

The Tenant applied for the following issues:

- For money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement;
- For the return of the security deposit;
- To suspend or set conditions on the Landlords' right to enter the rental unit;
- For the Landlords to comply with the Act, regulation or tenancy agreement;
- For the return of the Tenant's personal property;
- To recover the filing fee from the Landlords; and
- For 'Other' issues.

The Landlord's agent named on the Application (the "Landlord") appeared for the hearing and also represented the owner of the rental unit. The Tenant appeared for the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were given the opportunity to present their evidence and make submissions to me for the issues to be dealt with in this hearing.

Preliminary Issues

The Landlord confirmed receipt of the Tenant's Application and the Tenant's documentary and digital evidence. However, the Tenant was not aware of the

Application made by the Landlord and of the documentary evidence the Landlord was intended to rely on to rebut the Tenant's Application.

The Landlord confirmed that he had served the Tenant with his Application and evidence by registered mail pursuant to Section 89(1) (c) of the Act. The Landlord confirmed that he had sent the documents to the mailing address detailed on the Tenant's Application.

The Tenant checked the address on her Application and realized that she had made a clerical error in her mailing address on her Application. However, the Tenant submitted that the Landlord was aware that this was an incorrect address and that she had provided the correct address in previous correspondence between the parties.

In considering the Landlord's Application, I find that the Landlord was obligated to serve the Tenant to the mailing address that she had documented on her Application; this is one of the purposes of documenting a party's address on the Application. However, it was clear that the Tenant was not in possession of Landlord's Application or written evidence for this hearing and had not made the error on her Application intentionally or with malice.

As a result, I balanced the prejudice to both parties in relation to hearing the Landlord's Application and decided to consider only the Landlord's Application for an Order of Possession. This was because the Landlord was relying on evidence that had been submitted by the Tenant, namely the Tenant's notice to end the tenancy, to prove the end of tenancy. I informed the parties that I would consider adjourning the remainder of the Landlord's Application so that the Tenant can be in possession of the Landlord's monetary claim and evidence.

At the start of the hearing, the Landlord explained that the Tenant had served him a notice to end the tenancy but that the Tenant had not provided him with full and vacant possession of the rental suite. As a result, the Landlord sought an Order of Possession for the rental suite. I considered this request first as detailed below because a determination of the Landlords' request for an Order of Possession would have a significant impact on the Tenant's Application.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- What is to happen to the remainder of the parties' Applications?

Background and Evidence

Both parties agreed that this tenancy started on December 1, 2009 for a fixed term of one year after which it continued on a month to month basis. Monthly rent was \$1,950.00 payable on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$975.00 on October 26, 2009 which the Landlord still retains.

The Landlord referred to a letter provided by the Tenant in written evidence which is dated November 24, 2014 which states in part:

“As per section 45(3) of the Residential Tenancy Act, I am serving notice of the necessity to end the tenancy effective December 1, 2014 on breach of a material term...”

[Reproduced as written]

In the letter, the Tenant continues to write in detail allegations that the Landlord failed to identify and deal appropriately with mould that emanated from the downstairs property under her rental unit which she reported to the Landlord in August 2014.

The Tenant was asked about this letter and stated that the Landlord was negligent in dealing with the mould issue in the downstairs property. The Tenant testified that when the Landlord carried out remediation work, the mould travelled into her rental suite and as a result claims that the rental unit is no longer habitable and that her personal property inside the rental suite including her furniture is now contaminated with the mould.

The Tenant explained that she spoke with the Residential Tenancy Branch who informed her that she should write this letter to the Landlord to end the tenancy. When the Tenant was further questioned about this, the Tenant explained that she was confused about her rights under the Act and was not aware that she was ending the tenancy with this notice that prevented her access to the suite.

The Tenant explained that she was no longer residing in the rental suite but cannot remove her personal belongings because she alleges that they have been contaminated with mould from the downstairs property caused by the Landlord's negligence. The Tenant confirmed that she still had the keys for the rental suite but did not want to go back to the rental suite as it was not safe to do so without the necessary safety equipment and following proper mould decontamination protocols.

The Tenant wants the Landlord to decontaminate her belongings in accordance with written safety protocols and return them to her after providing evidence that the property is free of mould. The Tenant explained that in the same letter to end the tenancy she informed the Landlord that she would be seeking an extension to vacate the suite during this hearing after a ruling had been made on the Landlord's requirement to deal appropriately with her property.

The Landlord testified that the Tenant had notified him in writing that she would be vacating the suite and this was the basis on which he was seeking an Order of Possession. The Landlord submitted that there was no evidence that the Tenant's personal property had been contaminated by mould and that the Landlord should not be held responsible for decontaminating the Tenant's personal belongings in the manner suggested by the Tenant.

The Tenant explained that her personal property was likely infected by the mould but she did not have conclusive evidence of this as she was requesting that the Landlord pay to have her personal property inspected. The Tenant also confirmed that she had no intention of returning to the rental suite as she had found a new place to move into for January 1, 2015.

Analysis

Section 45 of the Act relates to ways in which a Tenant may end a tenancy. Section 45(3) of the Act states that a Tenant may end a tenancy if the Landlord has breached a material term of the tenancy and the Landlord has failed to correct the situation within a reasonable period after the Tenant has given written notice of the failure. The Tenant must then end the tenancy with a written notice detailing the reasons for ending the tenancy and the effective date the tenancy will end.

The Tenant confirmed that she had sent the Landlord the written notice to end the tenancy but claims that the effective date was associated with her not residing in the rental suite and that her intention was for the Landlord to deal with her belongings. The Landlord requests an Order of Possession based on the fact that the Tenant ended the tenancy. Therefore, I must look to the Act in order to make a determination of the Landlords' request.

Although the Tenant made a number of submissions about the intention behind her written notice, I find that the content of the written notice to end the tenancy gave a clear understanding to the Landlord that the Tenant was ending the tenancy as of December

1, 2014. Furthermore, the Tenant quoted the above section of the Act, further reinforcing the instructions in her letter to end the tenancy.

When a Tenant ends a tenancy in accordance with a written notice, the Tenant is required to give full and vacant possession of the rental unit back to the Landlord. This includes returning the keys to the rental unit and removing all personal property. If the Tenant leaves behind personal property the Landlord may deal with the Tenant's personal property in accordance with Part 5 of the Residential Tenancy Regulation pertaining to abandonment of property.

The Tenant claims that she has not removed her personal property from the rental suite because she requests that the Landlord be held responsible for decontaminating her belongings which she claims are contaminated with mould. However, the Tenant failed to provide sufficient evidence to conclusively prove that her personal property has been compromised by mould from the downstairs property. As it is the Tenant that makes this assertion, the Tenant bears the burden of proof in this case, which I find is unproven at this moment in time.

The Tenant was informed that because she had ended the tenancy, the Landlord would be entitled to an immediate Order of Possession based on her written notice as the effective date of her written notice had now passed.

The Tenant then stated that she would take steps to have her personal belongings tested for mould and that she was in the process of making arrangements to have her property removed from the rental suite after going through a stringent process of decontamination. The Tenant did make a request for the Landlord to provide her with sufficient time to remove her belongings. However, the Landlord was unwilling to accommodate this request.

The Tenant explained that she would seek monetary compensation from the Landlord for having to decontaminate her belongings after she had completed her own independent testing which she planned on doing before removing her items.

As I determined that the Landlord is entitled to an Order of Possession and the Tenant will be vacating the rental unit shortly, I dismissed the remainder of the Tenant's Application apart from her monetary claim as these are now moot issues.

The Tenant applied for a monetary claim in the amount of \$17,801.00. The Tenant explained that she would also like to make a claim for the costs associated with the decontamination of her personal property which she would now be incurring amongst

other costs. The Tenant was informed that such a claim was premature and that she would be at liberty to apply for this after the fact along with the necessary evidence to put the Landlord on sufficient notice for these claims.

The Tenant had provided a large amount of documentary evidence which the Tenant explained had not been compiled in any particular order. As a result, the Tenant requested that she be given an opportunity to re-submit her evidence in a more logical manner to best present her case. The Tenant requested some time to do this after she has moved her personal property out of the rental suite at which point she can reconsider the exact amount of relief being sought from the Landlord.

The Landlord indicated that he may be doing some testing of the rental unit and the Tenant's personal property after giving notice of entry in accordance with the Act. The Tenant welcomed this submission and requested that the Landlord share the findings which may help the parties to reach resolution.

As a result, the Tenant and the Landlord engaged in a lengthy discussion about settlement of both parties' monetary claims. However, after the Tenant presented her proposal, the Landlord stated that he was not able to settle the amount requested by the Tenant without the owner's consent and would have to speak with them first.

However, the parties agreed that they would continue negotiations between them to settle this matter outside of this hearing and that if they were unsuccessful, they will refile their monetary claims.

Therefore, based on the fact that: the Tenant was not in possession of the Landlord's written evidence pertaining to the Landlord's monetary claim; the parties intended to continue negotiations to resolve the monetary claims outside of this hearing; and the Tenant wanted to re-present and reconsider her monetary claim, I find it more appropriate to dismiss the parties' monetary claims and provide leave to re-apply.

In relation to the Landlord's request to keep the Tenant's security deposit, the Tenant **must** provide the Landlord with a correct forwarding address in writing after she fully vacates the rental suite in accordance with Section 38(1) of the Act, even though the Tenant corrected the one on her Application during the hearing.

The Landlord is then obligated to follow the 15 day time limit of the Act to make an Application, return the Tenant's security deposit, or seek the Tenant's consent to keep or make a deduction from it, following receipt of the forwarding address.

Conclusion

The Landlord's Application for an Order of Possession is granted which is effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

For the above reasons, I dismiss the Landlords' and Tenant's monetary claims **with** leave to re-apply including the security deposits.

The remainder of both parties' Applications is dismissed.

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: January 02, 2015

Residential Tenancy Branch

