



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR

Introduction

This hearing convened as a result of cross applications.

In the Landlord's Application for Dispute Resolution filed November 24, 2014 he sought the following relief:

1. An Order of Possession based on a Notice to End Tenancy for Unpaid Rent or Utilities issued November 2, 2014;
2. A Monetary Order for:
 - a. Unpaid rent or utilities;
 - b. To keep all or part of the pet damage deposit or security deposit
 - c. For money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
 - d. To recover the filing fee;
3. An Order permitting the Landlord to serve documents in a different way than required by the Act; and
4. To end the Tenancy Early and to Obtain an Order of Possession.

In the Tenant's Application for Dispute Resolution filed November 14, 2014 he sought the following relief:

1. To cancel a Notice to End Tenancy for unpaid rent or utilities issued November 2, 2014;
2. A Monetary Order for:

- a. The cost of emergency repairs;
 - b. For money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
 - c. Return of all or part of the pet damage deposit and security deposit; and
 - d. To recover the filing fee;
3. An Order suspending or setting conditions on the landlord's right to enter the rental unit;
4. An Order allowing the Tenant or the Tenant's guests access to the rental unit;
5. An Order authorizing the Tenant to change the locks to the rental unit; and
6. An Order allowing the Tenant to serve documents in a different way than required by the Act.

At the hearing on December 8, 2014 I made an Interim Decision wherein I decided to deal only with the Landlord's application for an Order of Possession and the Tenant's request to cancel the Notice to end Tenancy for Unpaid Rent issued on November 2, 2014 (the "Notice"). The balance of the parties' respective relief was dismissed with leave to reapply.

Also in my Interim Decision, I directed the parties to make written submissions on the issues before me. Each party was to provide to the Branch and the other party written submissions on their application by no later than December 22, 2014. The parties were then given until December 29, 2014 to provide to the Branch and the other party, their reply submissions. I also directed that neither party shall submit any further evidence which had not already been filed as of the date of the hearing on December 8, 2014.

On December 8, 2014, the Tenant filed an application wherein he sought essentially the same relief as in the within application. On December 19, 2014, the Landlord filed another application wherein he also sought essentially the same relief as in the within application. The hearing on these subsequent filings occurred on December 30, 2014.

The decision on these subsequent filings was rendered January 8, 2015 wherein the Arbitrator articulated the relief sought by the parties as follows:

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit, for money owed or compensation for loss under the Residential Tenancy Act (the "Act"), to serve documents in another way than permitted by the Act, to recover the filing fee, and for 'Other' issues.

The Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), for more time to cancel the Notice, for money owed or compensation for damage or loss under the Act, allow access to and from the rental suite, and authorise the Tenant to change locks to the rental unit.

During the December 30, 2014 hearing, the parties testified that they had not received my Interim Decision. Further, the Tenant testified that he had provided his written submissions to the files for the December 30, 2014 hearing.

The Arbitrator forwarded the files for the December 30, 2014 hearing to my attention to ensure that all of the information was available to me before rendering a decision on the issue of whether the tenancy should end.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure, including the material filed for the December 30, 2014 hearing. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Notice be cancelled?

Background and Evidence

The Landlord provided a copy of the Residential Tenancy Agreement signed March 13, 2013 as well as a Timeline which provided details as to the terms of the tenancy as follows: the tenancy began March 13, 2013; monthly rent was payable in the amount of

\$375.00; and a security deposit in the amount of \$187.50 was paid also on March 13, 2013.

On October 6, 2014, another occupant drove into the corner of the rental building causing damage to the rental unit. The parties disagree as to whether the damage rendered the rental unit habitable.

The Tenant failed to pay rent for the month of November 2014. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 2, 2014 indicating the amount of \$375.00 was due as of November 1, 2014 (the "Notice").

Based on the submissions of the Landlord, I find that the Tenant was served with the Notice on November 2, 2014 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of November 5, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 10, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant failed to pay the rent within five days of service.

The Tenant, in his written submissions filed December 8, 2014 writes as follows:

"[The Landlord] doesn't grasp that if an eviction notice is being disputed, the rent is, so to say, suspended, and there's not much he can do. Maybe find another job."

The Tenant failed to provide any evidence that the rent was paid; rather, the essence of his submissions is that he is entitled to withhold rent while the damage to his rental unit was repaired and while his application remains outstanding.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Tenant is incorrect in his belief that he is entitled to withhold rent while the damage to his rental unit was repaired and while his application remains outstanding.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. The Tenant has not paid the outstanding rent and in this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and the Landlord is granted an Order of Possession.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 13, 2015

Residential Tenancy Branch

