



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Alexandria Holdings Ltd. and Re/Max Front Street Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF
 CNR, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an early end to the tenancy and to obtain an Order of Possession of the rental unit, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant and an agent for the landlord attended the hearing, each gave affirmed testimony and the landlord called one witness who also gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established that the tenancy should end earlier than a notice to end the tenancy would take effect under the *Residential Tenancy Act*?
- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession?
- Should the notice to end the tenancy be cancelled?

Background and Evidence

The landlords' agent testified that this tenancy began on December 1, 2012 and a new tenancy agreement was prepared for a month-to-month tenancy commencing March 1, 2013, and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlords' agent further testified that half of the tenant's rent is paid by a government Ministry. On November 3, 2014 the tenant paid the half of rent for November, 2014 and the Ministry had paid the other half. On November 19, 2014 the landlord received from the Ministry \$400.00 for half of December's rent but the tenant has not paid the other half of December's rent. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 5, 2014 by posting it to the door of the rental unit with a witness. A copy of the notice has been provided and it is dated December 5, 2014 and contains an expected date of vacancy of December 16, 2014 for unpaid rent in the amount of \$400.00 that was due on December 1, 2014. The landlord received \$400.00 from the Ministry marked for January's rent on January 12, 2014. The tenant is now in arrears of rent the sum of \$800.00, being \$400.00 for December, 2014 and \$400.00 for January, 2015.

The landlords' witness testified that as the assistant to the landlord's agent, the witness performs such duties as collecting rent, giving receipts, showing properties, delivering documents, and answering the phone. There are 6 units in the rental building, and the witness has been working there since August 15, 2014.

The witness further testified that she served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by taping it to the front door of the rental unit on December 5, 2014 and the landlords' agent was present. The witness has not collected any rent from the tenant since then. The witness and the landlords' agent went to the rental unit subsequently to serve the hearing package for this hearing, and the tenant told the witness that he had tried to pay the rent but someone at the office wouldn't accept it. No other employees work for the landlord on that rental property. The tenant did not offer the rent at that time, and neither the witness nor the landlords' agent asked for rent.

The witness also testified that the landlord receives a cheque from the Ministry on the last Wednesday of the month for the next month's rent, and in this case, the amount is \$400.00. The tenant is to pay the balance in cash or by cheque in the landlords' office, which is open Monday to Friday from 9:00 to 5:00 and Saturdays from 9:00 to 3:00. The witness testified that she always gives a receipt for rent paid by the tenant, but not for the portion paid by the Ministry. The tenant has not paid any rent to the witness since the issuance of the notice.

The tenant testified that the only time in 3 years he's been late with the rent was after obtaining permission from the landlords' agent for \$20.00 of arrears.

The tenant further testified that he tried to pay the rent but the landlords' agent refused to take a cheque when at the rental unit even though the tenant told her that the cheque was from the Ministry. The tenant was told to pay the landlords' agent directly and she refused it once and wasn't in the office when he tried on another occasion. The tenant also had pneumonia during October and November, 2014 and was hospitalized.

The tenant has the money now to pay the arrears.

The landlord requests an Order of Possession.

Analysis

Firstly, the landlord has applied for an order ending the tenancy earlier than a notice issued under the *Act* would take effect, yet the landlords have issued a notice to end the tenancy, and therefore an Order of Possession under that Section of the *Residential Tenancy Act* does not apply and is dismissed.

The *Act* also states that if a tenant does not pay rent when it is due under the tenancy agreement, the landlord may end the tenancy by giving the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full or dispute the notice, or must move out 10 days after service. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*, with the exception of the expected date of vacancy. I am also satisfied that the landlords' agents served the notice on December 5, 2014 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or December 8, 2014, and the expected date of vacancy is changed to December 18, 2014. The tenant did not pay the rent but disputed the notice.

The tenant still has not paid the rent in full and has fallen further into arrears. I do not accept the testimony of the tenant that the landlord refused rent, having heard from both parties and the witness. However, the landlord did accept rent from the Ministry on behalf of the tenant on January 12, 2015. I refer to Residential Tenancy Branch Policy website which states, in part:

The landlord should be clear if they don't want the tenancy to continue. If the tenant pays the overdue rent or utilities **after** the five day deadline, the landlord should clearly tell the tenant in writing that:

- The payment for rent or utilities is being accepted for **use and occupancy only** – it does not cancel the 10 Day Notice to End Tenancy
- The tenant must still move out

Note: The "use and occupancy" arrangement is very short-term – it allows a tenant to stay only for the rest of the month in which they received the Notice to End Tenancy and made a payment. A landlord should not continue accepting rent or utility payments under this arrangement otherwise they run the risk of reinstating the tenancy.

In this case, the Ministry did not pay the balance of rent due for December, 2014; the landlords' agent testified that the cheque was marked for January's rent by the Ministry. Therefore, I find that the landlord has not reinstated the tenancy.

In the circumstances, I find that the landlord had cause to issue the notice, and the tenant's application to cancel it is dismissed.

The *Act* also states that where a tenant disputes a notice to end the tenancy issued by a landlord, if I dismiss the tenant's application or uphold the notice, and the landlord makes an oral request for an Order of Possession, I must grant one. In this case, the landlords' agent made such a request at the hearing. Since the effective date of vacancy has passed, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

The landlords' application seeks only an Order of Possession ending the tenancy earlier than a notice would take effect and to recover the filing fee. The landlord has not made an application for a monetary order for the unpaid rent, and I make no orders in that regard. Because the landlord has not been successful with the application before me, I decline to order that either party recover filing fees.

Conclusion

For the reasons set out above, the landlords' application for an order ending the tenancy earlier than a notice would take effect is hereby dismissed.

The tenant's application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 5, 2014 is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 16, 2015

Residential Tenancy Branch

