



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Samuel Heller Ltd.
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes For the tenant: CNR, MNDC
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and a monetary order for money owed or compensation for damage or loss.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee.

The landlord and the tenant’s agent attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the landlord’s Notice and to a monetary order for monetary compensation?

2. Is the landlord entitled to an order of possession for the rental unit, a monetary order for unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on April 1, 2013 and that monthly rent is \$1215, with an additional \$50 for a parking fee.

Near the beginning of the hearing and in written submissions, the tenant's agent submitted that the tenant was not mentally competent to attend to his affairs and that as such, he, the agent, would represent the agent. The agent submitted that he was fully aware of the circumstances surrounding the issues in both applications as he had been involved with this tenancy and could represent the interests of the tenant.

It is noted that the tenant's agent submitted that the tenant was served only the first page of a 2 page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and that therefore the Notice was invalid.

In response to my question, the landlord could not verify that both pages of the Notice were served to the tenant. The landlord also did not submit a copy of the Notice into evidence.

The tenant submitted a copy of the Notice, which was page 1 of the 2 page document. In reviewing the document at the hearing, the landlord did not dispute that the Notice was not dated by the landlord's agent, who served the document, nor that the rental unit address was left blank on the notice part of the Notice.

Thereafter, the tenant's agent supplied testimony regarding the tenant's monetary claim for compensation, which was said by the agent to be regarding the tenant's alleged lack of quiet enjoyment.

The tenant's agent submitted that the tenant was not allowed to have him as a guest or occupant by the landlord, which caused the tenant stress as he could then not meet the financial demands of the tenancy. The tenant's agent submitted that the tenant was entitled to have someone as an occupant, and that as he was not, the tenant was deprived of his right to quiet enjoyment.

Analysis

Landlord's application-

The Act requires that in order to be effective, a landlord's Notice to end the tenancy must be in the approved form. Section 52 of the Act, as to the form and content of the Notice, requires that the Notice be signed and dated, and in this case, the Notice was undated.

The landlord was informed, without contest, that their Notice did not conform to the Act.

I therefore dismiss the landlord's application seeking an order of possession for the rental unit and a monetary order for unpaid rent, with leave to reapply when a proper Notice has been served.

I also dismiss the landlord's request for recovery of the filing fee.

Tenant's application-

I grant the portion of the tenant's application seeking cancellation of the Notice for the reason stated above. The Notice in question is hereby cancelled, with the effect that the tenancy continues until it may otherwise end under the Act.

As to the portion of the tenant's application seeking monetary compensation, the hearing concluded due to time constraints prior to the landlord being able to respond to the tenant's agent's evidence.

I therefor order that the hearing be adjourned and scheduled to reconvene in accordance with section 64 of the *Residential Tenancy Act*, for the purpose of conducting the remaining portion of the hearing on the tenant's application seeking monetary compensation.

The parties are advised that the adjourned, reconvened hearing is simply a continuation of the present hearing and will be conducted whether you attend or not. Additional documentary or digital evidence will not be accepted from the parties regarding the tenant's application, and if received, will not be reviewed.

Conclusion

The landlord's application is dismissed, with leave to reapply.

The portion of the tenant's application seeking cancellation of the Notice is granted.

This hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing, to be reconvened and after which a final Decision will be rendered as to the remaining portion of the tenant's application seeking monetary compensation.

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 12, 2015

Corrected: February 5, 2015

Residential Tenancy Branch

