



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OPC, MNR, MNDC, MNSD, FF

Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and money owed, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing, the Tenants submitted that they did not provide any documentary evidence in response to the Landlords' Application for Dispute Resolution as they believed, based on legal advice they say they received from legal counsel, that the Landlords' application would be dismissed. The Tenants submitted that they were told that the Landlords were prohibited from proceeding by way of an Order made in 2014. Specifically, the Tenant submitted that on November 18, 2014 the Landlords, as applicants, did not attend a dispute resolution hearing and therefore the Landlord's application was dismissed without leave to reapply.

The November 18, 2014 Order prohibited the Landlords from reapplying on the same notice to end tenancy, it did not preclude the Landlords from applying for dispute resolution should circumstances warrant the issuance of a subsequent notice to end tenancy.

In the within hearing, the Landlords sought an Order of Possession pursuant to the 1 Month Notice to End Tenancy for Cause issued January 23, 2015 (the "Notice").

The Tenants conceded that they received the Notice on January 23, 2015. They also acknowledged that they did not make an application to dispute the Notice.

The Notice explains that pursuant to section 47 of the Act, the Tenants had ten days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. Sections 47(4) and (5) provide as follows:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Tenants did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. This is not a rebuttable presumption. Accordingly, I find that the Landlords are entitled to an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenants are conclusively presumed to accept the end of the tenancy pursuant to section 46(5), an adjournment of the Landlord's application for an Order of Possession would serve no purpose except to extend the tenancy beyond that which is permitted by the Act. Accordingly, I denied the Tenants' request to adjourn the Landlords' application for an Order of Possession.

I then considered the Tenants' request to adjourn the Landlords' application for a monetary Order. Both parties were permitted to make submissions on the question of whether an adjournment of the Landlords' application for monetary relief should be granted.

Issues to be Decided

Are the Tenants entitled to an Order adjourning the Landlords' application for monetary relief?

Background and Evidence

The Landlords testified as to the terms of the tenancy as follows: the tenancy began July 2012; monthly rent was payable in the amount of \$1,800.00; and a security deposit in the amount of \$900.00 was paid at the time of the start of the tenancy.

The Landlords testified that the Tenants were consistently late paying rent and that as of the date of the hearing, the Tenants were in arrears of approximately \$8,700.00. The Landlords testified that while the Tenants have paid some funds towards the arrears of rent and utilities, a significant amount remains outstanding. The Landlords stated that they carry a line of credit on the rental property and rely on the rental payments to service this debt.

The Landlords testified that they were very careful to follow the Act in proceeding with their Application for Dispute Resolution, and specifically to ensure that the service of the Application materials was accomplished in time and witnessed by a third party. Finally, the Landlords testified that they wish to have a resolution of all issues, so that they may have finality and move forward with a more successful tenancy and minimize their financial losses.

As noted above, the Tenants testified that they did not submit evidence as they were told by their lawyer that the hearing would be dismissed as the Landlords were not granted leave to reapply. The Tenants also submitted that they did not receive a complete application package from the Landlords. The Tenants conceded that they owed rent, but submitted that they have evidence which shows that the amount outstanding was less than that which the Landlord claimed. The Tenants also testified that a second dwelling existed on the rental property which was used by the Landlords, yet the Tenants paid the utilities for this space. The Tenants submitted that they should be credited some amount for the utilities they paid, which were in fact used by the Landlords.

During the hearing I ordered that the Landlord's application for monetary relief be adjourned. In doing so, I considered the Residential Tenancy Branch Rules of Procedure and in particular the following provisions:

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

6.3 Adjournment after the dispute resolution proceeding commences

At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.

6.4 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objections set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

Pursuant to Rule 6.3 I adjourn these proceedings. In doing so, I make the following findings:

1. I accept the Tenant's testimony that they have evidence which may be relevant to the issues before me and that they did not submit this evidence as they were advised (erroneously) that the hearing would not proceed. To proceed in the absence of the Tenants' evidence would significantly prejudice the Tenants. An adjournment will provide the Tenant with a fair opportunity to be heard.
2. The Landlords' evidence, filed February 13, 2015, contained 19 pages of documents which appear to be relevant to the issue of the monetary relief sought by the Landlord, and in particular provide a detailed listing of payments made by the Tenants. It is possible that this evidence may be very helpful in determining

the issues before me. As this evidence was only submitted on the 13th of February, I find that it affects the sufficiency of the Tenants' notice of the dispute resolution proceedings. Consequently, I find that the Tenants should be afforded the opportunity to respond to this evidence.

3. Having severed the issues of the Order of Possession and monetary relief sought by the Landlord, the prejudice to the Landlord is lessened as the Landlord, having been granted an Order of Possession, will be able to re-rent the rental unit and potentially minimize their financial loss.

Pursuant to section 64 of the Act, I Order the following:

1. The Tenants shall deliver to the Branch and to the Landlords all evidence upon which they intend to rely in response to the Landlords' monetary claims as set out in their application filed February 4, 2015, by no later than 4:00 p.m. on March 6, 2015;
2. The Tenants may deliver the above evidence to the Landlords by email, in which case they must provide proof to the Branch that such evidence was received by the Landlords;
3. The Landlords shall deliver to the Branch and to the Tenants, any evidence with respect to the Tenants allegations concerning a secondary dwelling on the rental property by no later than 4:00 p.m. on March 6, 2015;
4. The Landlords may deliver the above evidence to the Tenants by email, in which case they must provide proof to the Branch that such evidence was received by the Tenants;
5. Except as provided above, neither party shall delivery any further evidence to the other or to the Branch.

Conclusion

The Tenants did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlord is granted an Order of Possession.

The Landlord's request for a Monetary Order is adjourned. The parties shall exchange evidence with respect to the Landlords' claim for monetary compensation in accordance with this Order.

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: February 27, 2015

Residential Tenancy Branch

