



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, ERP

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution wherein the Tenant sought an Order cancelling a Notice to End Tenancy issued for unpaid rent; an Order compelling the Landlord make emergency repairs; and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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.

Preliminary Matter

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the Tenant's claim for monetary compensation.

I exercise my discretion to dismiss the Tenant's claim for monetary compensation with leave to re-apply.

During the hearing the Landlord requested an Order of Possession should the Tenant be unsuccessful in his Application to cancel the 10 Day Notice.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord make emergency repairs?
3. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord introduced a copy of the residential tenancy agreement and provided testimony as to the terms of the tenancy as follows: the tenancy began May 1, 2009; rent was payable in the amount of \$700.00 due on the 1st of each month; rent had not been raised during the tenancy and as such remained \$700.00 at the date of the hearing; and, the Tenant paid a security deposit of \$350.00 paid.

The Landlord testified that in May of 2014 he issued a 2 Month Notice to End Tenancy for Landlord's use of the Property. It was his intention at the time, to have his daughter move into the rental unit. The Landlord further advised that the Tenant asked to remain in the rental unit until he could find alternate accommodation. The Landlord agreed to allow the Tenant to remain while he sought another rental unit and took no further steps with respect to the 2 Month Notice.

The Landlord testified that the Tenant then failed to pay rent for February 2015. Submitted into evidence was a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 10, 2015 which specified an effective vacancy date of February 20, 2015 and which provided that the amount of \$700.00 was due on February 1, 2015.

The Landlord testified that on February 10, 2015 the Tenant was personally served the 10 Day Notice by B.M. and witnessed by S.M.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. 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. As February 15, 2015 is a Sunday, the Tenant had until February 16, 2015 to file for dispute resolution. The Tenant did indeed file for dispute resolution on February 16, 2015.

The Tenant agreed that he did not pay rent for February or March 2015. He testified that he was told by C.F., whom he identified as a "black mould specialist" as well as "someone" at the Residential Tenancy Branch, not to pay rent until this hearing.

The Landlord testified that while the Tenant provided a cheque for the February 2015 rent, he put a stop payment on the cheque such that the funds were not received.

The Landlord asked that the Order of Possession be effective on March 15, 2015 to allow the Tenant more time to vacate the rental unit.

Analysis

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

The second page of the 10 Day Notice to End Tenancy for Unpaid Rent includes the following information:

Important Facts

- The tenant is not entitled to withhold rent unless ordered by an arbitrator.

Tenants may dispute the notice for specific reasons such as:

- they have proof the rent was paid;
- they have an order from an Arbitrator giving them permission to keep all or part of the rent; or,
- they held part or all of the rent with prior notice to the landlord, for the cost of emergency repairs.

The Tenant agreed he did not pay rent.

I find that the Tenant failed to prove that he had a right to withhold rent. As the information provided by the Tenant is contrary to the *Act*, I do not accept his testimony that he was informed by the Branch not to pay rent until this hearing. The Tenant has not been granted an Order from an Arbitrator giving him permission to keep all or part of the rent. Finally, the Tenant did not submit any evidence that he paid for emergency repairs.

As such, I find the 10 Day Notice to End Tenancy for Unpaid Rent is valid and enforceable and the Tenant must vacate the rental unit.

The Landlord then requested an order of possession for the unit. Under section 55 of the Act, I must grant that request. The Landlord requested an Order of Possession and agreed that it be effective March 15, 2015. Accordingly, I grant the Landlord the Order of Possession effective March 15, 2015.

As the tenancy is ending, I dismiss the Tenants request for an Order compelling the Landlord to make emergency repairs.

As noted earlier in this my decision, the Tenant's application for monetary compensation is dismissed with leave to reapply.

Conclusion

Based on the above, I dismiss the Tenant's Application for an Order dismissing the 10 Day Notice. The Landlord is granted an Order of Possession effective March 15, 2015.

As the tenancy is ending, I similarly dismiss the Tenant's application for an Order that the Landlord make emergency repairs as such an Order is no longer necessary.

The Tenant's application for monetary compensation is dismissed with leave to reapply pursuant to Rule 2.3 of the Residential Tenancy Branch Rule of Procedure 2.3.

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: March 10, 2015

Residential Tenancy Branch

