



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

The landlord seeks an order of possession pursuant to notice under section 45 in relation to the "other" remedy. The notice pursuant to section 45 was delivered to the landlord by a cotenant.

The tenant did not attend this hearing, although I waited until 0950 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the dispute resolution package on 27 March 2015 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. The landlord testified that the tenant did not retrieve the package and that it was returned to the landlord. Service may not be avoided in this manner. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the cotenants' notice?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 June 2014. Both the tenant and his cotenant entered into a tenancy agreement with the landlord on 25 May 2014. Monthly rent of \$1,100.00 is payable on the first. The landlord testified that he continues to hold the tenant's security deposit in the amount of \$550.00, which was collected 25 May 2014.

On 19 March 2015, the cotenant provided notice to the landlord:

To: [landlord]

I, [cotenant], would like my name taken off the tenant agreement as of the end of April 2015 since I have not been living in the residence since Feb. 15, 2015.

Thank you,

[cotenant]

On 20 March 2015, the landlord wrote to the tenant:

Notice to [tenant] to sign a new tenancy agreement.

Dear [tenant]

With [cotenant] your previous roommate having issued a notice to end tenancy, your current agreement will come to end on April 30th, 2015.

Upon receipt of this notice, please arrange a time with your landlord to sign a new agreement before the expiry of the current tenancy agreement.

Please have the following prior to arranging the appointment to sign the new agreement:

- 1. Damage deposit in the amount of \$550.00*
- 2. Copy of Personal Identification...*

Thank you

[landlord]

[phone number]

(Since I have unable to contact you I will post this notice on the front door with a copy of the notice to end tenancy.)

The landlord testified that the tenant paid rent for April. The landlord testified that he issued a receipt to the tenant that the payment was received for the tenant's "use and occupancy only" of the rental unit.

Analysis

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree; or
- the tenant abandons the rental unit.

Subsection 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

Pursuant to subsection 45(4) of the Act, a notice given pursuant to section 45 must comply with section 52 of the Act.

Section 52 sets out the various requirements of a notice to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...

The notice provided to the landlord by the cotenant sets out the date, is signed by the cotenant, and sets out an effective date of the notice; however, it does not set out the address of the rental unit. I find that the notice given by the cotenant does not comply with the requirements of section 52 of the Act.

Residential Tenancy Policy Guideline, “13.Rights and Responsibilities of Co-tenants” (Guideline 13) sets out the definition of a cotenant:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

In this case, the tenant and cotenant both signed the same tenancy agreement. This means that they are presumed to be cotenants under that agreement.

In this case, a cotenant provided notice to the landlord to end the tenancy. Guideline 13 sets out the ramifications when a cotenant gives notice:

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

[emphasis added]

In this case the cotenant did not give proper notice as the notice did not comply with the requirements in section 52 of the Act. In a situation where I am using the notice provided by one tenant against his or her co-tenant, strict compliance with the statute is required. I find that the notice provided by the co-tenant is insufficient to end the tenancy for the purposes of providing an order of possession against the tenant.

The landlord’s application is dismissed without leave to reapply.

Dismissing this application without leave to reapply does not preclude the landlord from reapplying to end the tenancy should the cotenant provide a notice to end tenancy that complies with section 52 of the Act.

As the landlord has not been successful in his application he is not entitled to recover his filing fee from the tenant.

Conclusion

The landlord's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 12, 2015

Residential Tenancy Branch

