



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, O
 CNR, O

Introduction

This hearing was convened by way of conference call, having been adjourned by consent of the parties on June 10, 2015.

The landlord and the tenant attended the hearing and the landlord was accompanied by legal counsel.

The parties each provided evidentiary material in advance of the hearing and gave affirmed testimony. The parties, or counsel, were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for breach of an agreement?
- Should the notice to end the tenancy for unpaid rent or utilities be cancelled?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2012 and expired on May 1, 2015. The tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable under the tenancy agreement, a copy of which has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord.

The tenant did not move out of the rental unit in accordance with the agreement, and the tenant owes rent for the months of April, May and June, 2015. The landlord served

the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but does not recall when or how. A copy of the notice has been provided and it is dated April 27, 2015 and contains an expected date of vacancy of May 1, 2015 for unpaid rent in the amount of \$1,000.00 that was due on April 1, 2015. Both pages of the form have been provided. The landlord stated that some rent was collected in April, 2015 but does not recall when or how much.

The landlord seeks an Order of Possession based on Section 55 (2) (c) of the *Residential Tenancy Act*, and the tenant's failure to move out of the rental unit on May 1, 2015 in accordance with the tenancy agreement.

The tenant testified that rent has not been paid because the parties had an agreement with an option to purchase. The tenant borrowed \$20,000.00 which was paid to the landlord in accordance with that agreement and paid the gas and garbage. However, by December, 2014 it was clear to the tenant that the tenant was unable to get the financing to purchase the home and the landlord decided to sell.

The tenant stated that she would be willing to move out if the landlord pays back the \$20,000.00 less the amount owed for rent. The tenant has complied with the agreement up until the landlord told the tenant in December, 2014 or January, 2015 that he would have to sell. The agreement also provides for an additional 2 years, but the landlord decided to not renew.

Analysis

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord's testimony was very uncertain and vague on when or how the notice was served on the tenant or how much rent is unpaid or was unpaid at the time the notice was issued or what was paid since. Those dates and amounts are important because the *Act* specifies that once a tenant has been served, or deemed served, the tenant has 5 days to pay the rent in full or dispute the notice. Counsel for the landlord submits that service was between the date of issuance, April 27, 2015 and the date the tenant filed the application for dispute resolution disputing the notice, April 29, 2015. I find that to be a reasonable assumption, but I am still not clear on how much rent the landlord collected between its issuance and today. Where a landlord collects rent after the issuance of such a notice, the tenancy may have been reinstated unless the landlord has issued a receipt or some other writing to notify the tenant that the money is being accepted for use and occupancy only and does not serve to reinstate the tenancy. Therefore, I am not satisfied that the notice can be upheld, and I hereby cancel it.

I have also reviewed the tenancy agreement, and although I have no jurisdiction with respect to the option to purchase, it is clear that the fixed term expired on May 1, 2015.

Section 55 (2) (c) states as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

The term in the tenancy agreement states:

8. The term of the Lease commences at 12:00 noon on May 1, 2012 and ends at 12:00 noon on May 1, 2015.

9. Notwithstanding that the term of this Lease commences on May 1, 2012, the Tenant is entitled to possession of the Premises at 12:00 noon on April 30, 2012.

10. Any notice to terminate this tenancy must comply with the Act.

No where in that clause does it refer to the tenant vacating the rental unit at the end of the fixed term.

It also states:

36. The landlord agrees to renew the lease for an additional 2 year term upon completion of this lease.

Further, Section 44 of the *Act* describes in what situations a tenancy ends, and states at paragraph (3)::

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Therefore, I find that the tenancy has reverted to a month-to-month tenancy and the landlord's application for an Order of Possession cannot succeed.

The landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if rent remains unpaid, however the landlord must be prepared to provide testimony or evidence to satisfy an Arbitrator when the notice was issued, how and when it was served on the tenant, what rental payments have been made or missed by the tenant, and what the rental arrears amount to. Where a landlord issues such a notice, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant

does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. If the tenant pays the rent within that 5 day period, the notice is of no effect.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 27, 2015 is hereby cancelled and the tenancy continues.

The landlord's application is hereby dismissed.

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: June 17, 2015

Residential Tenancy Branch

