



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as a result of the tenant's two applications for dispute resolution under the Residential Tenancy Act ("Act"), one requesting an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause and the other requesting an order cancelling another landlord's 1 Month Notice to End Tenancy for Cause and for recovery of the filing fee paid for this application.

It appears that through an administrative error, the two applications of the tenant were scheduled for the same hearing date and time even though the applications related to different Notices to end the tenancy issued by the landlord.

At this hearing, the tenant and his representatives and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence 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.

Preliminary matter- At the outset of the hearing, the landlord did not raise an issue regarding service of the tenant's evidence; however, the landlord stated that they filed evidence prior to this hearing, sent by registered mail on July 3, 2015. The tenant submitted that the landlord's evidence was received on July 7, 2015 and I note that the Residential Tenancy Branch ("RTB") did not receive the landlord's evidence until July 9, 2015, the day prior to the hearing. I note further that the evidence was not before me at the hearing.

According to section 3.15 of the Rules, the respondent, the landlord in this case, must submit evidence so that it is received by RTB and the other party no later than 7 days prior to the hearing. I have determined that to accept the landlord's evidence would be procedurally unfair

to the applicant/tenant and I have therefore excluded their evidence, with the exception of the copy of a Notice to end the tenancy, as the tenant had not supplied a copy.

I note further that I have determined that the landlord's evidence would not have had an impact on my findings.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's two Notices?

Background and Evidence

I heard evidence that this tenancy began on September 1, 2014. The rental unit was one in a 39 unit building.

The undisputed evidence was that the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause (the "1st Notice") on May 22, 2015, listing an effective move-out date of June 22, 2015. Additionally the landlord issued the tenant another 1 Month Notice (the "2nd Notice") on May 22, 2015, listing an effective move-out date of June 30, 2015. The landlord explained that the two Notices were issued as they believed the first Notice contained an incorrect move-out date, and that the alleged causes listed were identical in nature and related to the same event.

The landlord submitted that on May 3, 2015, there was a fire in the tenant's rental unit, which rendered the rental unit uninhabitable. According to the building manager, the police department responders told the tenant he had to find another place to stay and that there was extensive damage to the residential property in general, due to the fire sprinklers. The landlord submitted further that the tenant was to blame for the fire and the resulting damage to the rental unit and residential property.

The landlord confirmed that they have requested records from the police and fire departments, but have not received them yet.

In response to the landlord's submissions, the tenant denied that the rental unit was inhabitable and denied causing the damage to the rental unit or residential property. The tenant referred to his photographic evidence showing the state of the rental unit.

The tenant submitted that the landlords changed the locks to the rental unit on May 4, 2015, and that he has not had access to his rental unit since that time.

As noted above, although the tenant did not supply a copy of either the 1st Notice or 2nd Notice, I did receive a copy of the 2nd Notice in the landlord's evidence.

The landlords confirmed that the locks to the rental unit had been changed so that the tenant did not have access, but denied keeping the tenant's personal property from him.

Analysis

In the case before me, the undisputed evidence was that the landlord changed the lock to the rental unit on May 4, 2015, and has not given the tenant a key to the rental unit. The tenant has not requested that he be granted an order to regain possession of the rental unit, as allowed under section 54(1) of the Act immediately after the lock change, or for monetary compensation and I am therefore only able to consider his applications' request for cancellation of the two 1 Month Notices, which in effect, relates to an ongoing tenancy.

I find that contrary to section 31(1) of the Act, the landlord changed the locks without authority to do so. Since the landlord has violated the Act and regained possession before they were entitled to do so through an application for dispute resolution, I find the landlord ended the tenancy as of May 4, 2015, when the landlord changed the locks to the rental unit. I therefore order that the tenancy ended on that date, May 4, 2015, pursuant to section 44(1)(f) of the Act.

As I have ordered that the tenancy has ended, I am therefore unable to consider the tenant's request for cancellation of the Notices, as the tenancy had ended prior to the landlord's Notices being issued and as the matter of possession of the rental unit is *res judicata*.

For the above reasons, I dismiss both applications of the tenant.

Conclusion

The tenant's two applications seeking cancellation of the landlord's Notices is 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: July 17, 2015

Residential Tenancy Branch

