



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNL, OPR, OPL, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord **and** an application by the tenant.

The tenant filed their application October 16, 2015 and subsequently amended October 26 and again November 06, 2015 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. To cancel an 10 Day Notice to end for unpaid rent - Section 46
2. To cancel a 2 month notice to end for Landlord's Use – Section 49
3. An Order to recover the filing fee for this application - Section 72

The landlord filed their application November 12, 2015 for Orders as follows:

1. An Order of Possession for unpaid rent - Section 55
2. An Order of Possession for Landlord's Use - Section 55
3. A Monetary Order for unpaid rent - Section 67
4. An Order to retain the security - Section 38
5. An Order to recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit. At the outset of the hearing the parties were provided opportunity to resolve their dispute to no avail. The tenant acknowledges receiving all evidence of the landlord. The tenant claims they hand-delivered their evidence to the landlord at the front door of the landlord. The landlord claims they were not provided any *subsequent* evidence from

the tenant and specifically denied receiving the tenant's evidence at their front door. In the absence of additional evidence respecting service of evidence I have not admitted the tenant's evidence received by this hearing December 16, 2015 and it does not form part of this Decision. The hearing proceeded on the merits of the admissible and *relevant* evidence in this matter.

Issue(s) to be Decided

Should the landlord's Notices to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is either party entitled to the monetary amounts claimed?

Background and Evidence

The *relevant* evidence is as follows. The parties agree the primary motive of their respective applications is the status of the tenancy and lawful possession of the rental unit. This tenancy started in 2014. The landlord resides in the basement portion of the residential house. The tenant resides upstairs. This hearing did not have benefit of a copy of the agreement. However, the parties agree the tenancy agreement was written to be for a fixed term ending November 30, 2015. The monthly payable rent is \$1800.00 payable on the 1st of each month. The landlord holds a security deposit. The tenant claims the written tenancy agreement contains a 'Right to Renew' upon the landlord being given 3 months' notice of intent to renew and provided a copy of their willingness to extend the agreement, dated August 20, 2015. The landlord denies it contains such a provision; and regardless, they did not want to renew the tenancy as they wanted the unit for themselves as of December 01, 2015.

On October 02, 2015 the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of November 30, 2015. The Notice did not stipulate a reason for the Notice. The landlord testified the Notice was the tenant's

notice to vacate November 30, 2015 in accordance with their fixed term agreement. The tenant disputed they were required to vacate.

The parties agree the tenant provided the landlord with sequentially-numbered post-dated cheques inclusive of August to December 2015 in the payable monthly amount for the payable date of the 1st. of the month. The parties disagreed as to the status of the cheques over the ensuing months: stopped or cancelled. The tenant claims the landlord always had availability to their rent cheques and the matter of all rent, *other than November 2015 rent* has never been at issue. The landlord agrees that rent for September, October and December 2015 rent is not at issue. The landlord claims the tenant's November 2015 rent cheque was not negotiable at the outset of November 2015, therefore on November 03, 2015 they issued the tenant a 10 Day Notice to End for Unpaid Rent claiming the rent of \$1800.00 was due on November 01, 2015. The tenant disputed the Notice as they claim the landlord has always been in possession of the November 01, 2015 cheque provided to the landlord in August 2015. The landlord provided into evidence a successfully *negotiated cheque* from the tenant dated November 01, 2015, numbered 207, stamped by their financial institution on November 20, 2015. The landlord claims the cheque was not given to them until November 15, 2015 – on the day of the effective date of the 10 day Notice to End. The landlord also provided a hand written receipt dated November 20, 2015 stating that the, "*cheque given on November 15/2015 is for \$1800 is for Use and occupancy only*" – as written. The tenant claims the landlord was always in possession of the cheque since given to the landlord in August 2015, but did not negotiate the cheque until November 20, 2015 so as to appear the rent was not paid until then. The landlord claims their bank provided an explanation of the November 2015 rent cheque, however they did not submit same into evidence, and the landlord acknowledged it did not affect the cheque being negotiated and deposited into their account.

Analysis

I find on the available evidence is that the landlord gave the tenant a 2 month Notice to

End Tenancy for Landlord's Use of Property dated October 02, 2015 with a premature effective date of November 30, 2015 vs. December 31, 2015. The Notice to End also did not contain a reason for the Notice pursuant to the Act; and I find the landlord's explanation the tenant ought to have known the reason for the landlord seeking to end the tenancy because the tenancy agreement stated as much inadequate to allow me to amend the Notice. I find the landlord's Notice to End for Landlord's Use of Property is not valid, and the landlord's request for an Order of Possession on the basis of this Notice must fail. The landlord's Notice to End for Landlord's Use of Property dated October 02, 2015 is **cancelled** and of no effect.

I find the evidence is that parties agreed the tenant provided the landlord with a series of post-dated cheques in August 2015 for the payable monthly amount - inclusive of a rent cheque for November 2015 - dated November 01, 2015. The landlord provided evidence they negotiated the cheque November 20, 2015. In the absence of other evidence and in the absence of sufficient evidence respecting the November 01, 2015 cheque 207, I find, on balance of probabilities, I prefer the evidence of the tenant the landlord was in possession of a rent cheque for November 01, 2015, and it was available to the landlord to negotiate it earlier than November 20, 2015. As a result, I find the landlord's 10 Day Notice to End for Unpaid Rent invalid, and the rent for November 2015 satisfied. The landlord's Notice to End for Unpaid Rent dated November 03, 2015 is **cancelled** and of no effect.

The landlord's application for an Order of Possession and for a Monetary Order for unpaid rent is **dismissed**, and the tenancy continues.

As the tenant was successful on application, they are entitled to recover their filing fee.

Conclusion

The tenant's application is **granted**.

The landlord's application is **dismissed**.

The tenancy continues in accordance with the Tenancy Agreement and the Act.

I Order the tenant may deduct \$50.00 from a future rent in satisfaction of their filing fee.

This Decision is final and binding on both parties.

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: December 22, 2015

Residential Tenancy Branch

