



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNC, LAT, LRE, OLC, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on December 31, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order authorizing the Tenant to change the locks - Section 70;
3. An Order suspending or setting conditions on the Landlord’s right to enter the unit - Section 70;
4. An Order that the Landlord comply with the Act - Section 62; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 23, 2015 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Tenant made its application to dispute the notice to end tenancy within the time allowed?

Is the Landlord entitled to unpaid rent and an order of possession?

Are the Parties entitled to recovery their filing fees?

Background and Evidence

The following are undisputed facts: The tenancy started on October 1, 2014. Rent of \$2,600.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,300.00 as a security deposit. On November 6, 2015 the Landlord issued, signed and dated a one month notice to end tenancy for cause (the "Notice"). The Notice was posted on the door on November 6, 2015. The Notice contained two pages and had two reasons noted on the second page: repeated late payment of rent and breach of a material term of the tenancy. The Notice has an effective date noted as December 31, 2015. The Tenant found the Notice on the door on November 6, 2015. The Tenant has not paid the rent for December 2015 and for January and February 2016.

The Tenant states that it did not apply to dispute the Notice sooner as the Tenant did not know it had a time limit. The Tenant states that it was aware of the RTB web site as it applied on line. The Tenant asks for sufficient time to find another unit as the Tenant has young children and will not be able to move within a few days.

The Landlord states that a 10 day notice to end the tenancy for unpaid rent (the "Rent Notice") was served on the Tenant on December 3, 2015 by posting the Rent Notice on the door. The Tenant states that no such Notice was received by the Tenant. The Tenant states that rent was not paid because the Landlord was acting intrusively in entering the Tenant's unit for baseless inspections.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, regulations or tenancy agreement. Although the Landlord's application for an order of possession based on the Rent Notice was dismissed at the hearing due to conflicting evidence of service of the notice, upon further consideration of the undisputed evidence of unpaid rent I find that the Landlord is entitled at least to a monetary order for unpaid rent in the amount of **\$7,800.00** (2,600.00 x 3). Deducting the security deposit plus zero interest of **\$1,300.00** from this amount leaves **\$6,500.00** owed by the Tenant to the Landlord.

Section 47 of the Act provides that where a tenant receives a notice to end tenancy for cause and does not dispute this notice by making an application for dispute resolution within 10 days receipt of the notice, the tenant is conclusively presumed to have accepted the tenancy end on the effective date of the notice and must vacate the unit by that date. As the Tenant did not dispute the Notice within 10 days of receiving the Notice and considering that the Tenant has no evidence of any exceptional circumstances that would have prevented the Tenant from making an application in time, I find that the Tenant must move out of the unit and that the Landlord is entitled to an order of possession. Given that the Tenant has children, that the Landlord has been provided with a monetary order for rent to the end of February 2016 and accepting that making the Tenant move out within a few days would be unnecessarily harsh in the circumstances, I make the order of possession effective on 1:00 p.m. February 29, 2016.

As the tenancy is ended I dismiss the remaining claims of the Tenant as these claims are related to an ongoing tenancy. I decline to award either Party a filing fee.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,300.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the remaining amount of **\$6,500.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I grant the Landlord an order of possession effective 1:00 p.m. on February 29, 2016.

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: February 10, 2016

Residential Tenancy Branch

