



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNR

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for cause / and cancellation of a notice to end tenancy for unpaid rent. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that he seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the parties agree that the tenancy began on August 01, 2011. Monthly rent of \$875.00 is due and payable in advance on the first day of each month, and a security deposit of \$450.00 was collected.

Arising from rent which was unpaid when due on March 01, 2016, pursuant to section 46 of the Act which addresses **Landlord's notice: non- payment of rent**, the landlord issued a 10 day notice to end tenancy dated March 09, 2016. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2016. Subsequently, on March 10, 2016 the tenant paid rent due for March in the full amount of \$875.00. Additionally, the tenant filed an application to dispute the notice on March 14, 2016.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated March 01, 2016. The notice was personally served on March 10, 2016. A copy of the notice was submitted in evidence.

The date shown on the notice by when the tenant must vacate the unit is March 31, 2016. Reasons identified on the notice in support of its issuance are as follows:

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Tenant has caused extraordinary damage to the unit / site or property / park

The tenant filed an application to dispute the 1 month notice on March 14, 2016.

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated March 09, 2016. The tenant paid the full amount of outstanding rent on March 10, 2016, and also filed an application to dispute the notice on March 14, 2016. As both of these actions fall within the statutory 5 day period available for doing so after receiving the notice pursuant to section 46(4) of the Act, the 10 day notice is hereby set aside.

I also find that the tenant was served with a 1 month notice to end tenancy for cause dated March 01, 2016, and served on March 10, 2016. As the tenant filed an application to dispute the notice on March 14, 2016, I find that his application was filed within the statutory 10 day period available for doing so after receiving the notice pursuant to section 47(4) of the Act.

Section 47 of the Act provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

During the hearing the landlord was unable to cite any specific “illegal activity” identified broadly on the notice in support of its issuance.

As to “extraordinary damage” identified on the notice in support of its issuance, the landlord made reference to past incidents of flooding and related damage arising from a plugged sink and / or broken toilets. However, there are no specific dates when such damage allegedly occurred, or receipts, or photographs in support of the landlord’s claim that thousands of dollars’ worth of damage occurred as a result of the tenant’s related actions or inactions. In summary, in the absence of sufficient evidence to support the landlord’s claims, I find that the 1 month notice must also be set aside.

Following from all of the above, as both notices to end tenancy are set aside, the tenancy presently continues in full force and effect.

Conclusion

The 10 day notice and the 1 month notice to end tenancy are both hereby set aside, with the result that the tenancy continues uninterrupted.

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: April 05, 2016

Residential Tenancy Branch