



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, MNR, MNSD, OPR, ERP, RP, PSF, LRE, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to cancel a Notice to End Tenancy;
2. For money owed or compensation for damage or loss under the Act;
3. To have the landlord comply with the Act;
4. To make emergency repairs for health and safety reasons;
5. To provide services or facilities required by law;
6. To suspend or set conditions on the landlord's right to enter the rental unit; and
7. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings.

I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the landlord's request for an order of possession and a monetary order for unpaid rent. The balance of the tenant's application is dismissed, with leave to reapply.

Preliminary matter

In this case, the tenant has applied to be allowed more time to dispute a Notice to End Tenancy. The tenant has filed two different notices to end tenancy as evidence; however, the tenant did not indicate in their application which notice they are disputing.

I have reviewed both the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), issued on February 16, 2016, and the 1 Month Notice to End Tenancy for Cause, issued on February 12, 2016, both were filed within the time period permitted under the Act. Therefore, I find it not necessary to grant the tenant more time.

Issues to be Decided

Should the Notice be cancelled?
Is the landlord entitled to an order of possession based on unpaid rent?
Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy began on October 15, 2015. Rent in the amount of \$1,900.00 was payable on the 15th of each month. A security deposit of \$950.00 was paid by the tenant

The tenant received the Notice, in person on February 16, 2016. The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the notice.

The landlord testified that the tenant failed to pay rent on February 15, 2016, and the balance owed at the time the Notice was issued was \$1,900.00.

The landlord testified that the tenant did not pay the rent within 5 days. The landlord stated on March 15, 2016, a further \$1,900 was due for March 2016, rent leaving the balance of outstanding rent at \$3,800.00.

The landlord stated that the tenant made a partial payment of \$1,500.00, on March 15, 2016, and a further partial payment of \$400.00 on March 17, 2016. The landlord seeks

an order of possession and a monetary order for unpaid rent in the amount of \$1,900.00.

The tenant testified that they did not pay February 2016, rent because they feel the landlord breached the Act, by failing to provide services. The tenant stated that rent for March 2016, was paid within five days of rent being due.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the tenant disputed the Notice, I find the tenant's application had no merit as the tenant did not pay the outstanding February 2016, rent within five days.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

*26 (1) A tenant **must** pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

In this case, the evidence of the tenant was that they withheld February 2016, rent because the landlord failed to provided services. I find the tenant did not have the authority under the Act, such as an order from an Arbitrator to deduct any portion of rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement. I find the Notice issued on February 16, 2016, is a valid notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

I find that the landlord has established a total monetary claim of **\$2,000.00** comprised of unpaid rent, up to and including March 2016, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$950.00** in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$1,050.00**. This order may be filed in the Provincial Court (Small

Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the tenancy has ended based on the 10 Day Notice to End Tenancy for Unpaid Rent. I find it not necessary to consider the merits of the 1 Month Notice to End Tenancy for Cause.

Conclusion

The landlord is granted an order of possession and a monetary order. The tenant's application to cancel the Notice is dismissed. The balance of the tenant's application is dismissed with leave to reapply.

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 11, 2016

Residential Tenancy Branch