



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC CNR OPC OPR FF

Introduction

Both parties attended the hearing and confirmed personal service of the 10 Day Notice to End Tenancy dated March 2, 2016 to be effective April 30, 2016. The landlord confirmed he received the tenant's Application by registered mail. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause of repeated late payment of rent pursuant to section 47;
- b) To cancel a 10 day notice to end tenancy for unpaid rent pursuant to section 46;
- c) To order the landlord to abide by the provisions of section 49 and compensate the tenant according to section 51 for a notice to end tenancy for landlord's use of the property;
- d) To obtain a refund of the security deposit; and
- e) To recover filing fees for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent or other sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that they should have received one month free rent in compensation for a Notice to End Tenancy for landlord's use of the property pursuant to sections 49 and 51? Are they entitled to the return of their security and pet damage deposits pursuant to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 15, 2015 on a fixed term to March 31, 2016. Rent was \$1700

and a security deposit of \$750 and a pet damage deposit of \$750 were paid in September 2015.

The parties explained the events. The landlord said the tenant was having difficulty with the rent as he found it too expensive and he requested an early end to the tenancy in January 2016. The landlord sent him a letter on February 28, 2016 saying they had sold their own home and could move into the tenant's apartment on March 31, 2016 at the end of the fixed term lease. The tenant then did not pay rent for March 2016 so they served a ten day Notice to End Tenancy for unpaid rent. The parties agreed that the tenant had still not paid rent for March but vacated on April 2, 2016. The landlord said the tenant owed for rent and utilities and some other matters which I declined to hear as the landlord has an Application to be heard on April 29, 2016 in respect to his monetary claim. As the tenant has vacated, I declined to hear information on the one month Notice to End Tenancy for cause.

The tenant said he got the letter saying the landlord needed his unit so he assumed he was entitled to one month's free rent pursuant to section 49 and 51 of the Act. He did not pay rent for March and vacated April 2, 2016. He would like his deposits refunded but has not supplied his forwarding address to the landlord yet.

Included with the evidence is a letter from the landlord, the tenancy agreement, a 10 Day Notice to End Tenancy for unpaid rent, a 30 day Notice to End Tenancy for cause and a cheque dated January 1, 2016.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the tenant would be entitled to one month's free rent pursuant to section 51 if a two month Notice to End Tenancy for Landlord's Use of the Property was served on the tenant. However, I find there was no section 49 Notice served on the tenant. The evidence in file is a letter from the landlord dated February 27, 2016 giving the tenant written notice to end the tenancy at the end of the term of the fixed lease agreement which was March 31, 2016. Apparently the landlord had told the tenant that they would move into the unit as they sold their home. I find insufficient evidence to support the tenant's contention that this was a section 49 Notice. Section 52 of the Act provides that when the landlord gives notice to the tenant, it must be in the approved form.

Since I find the tenant was not served a section 49 Notice, I find he was not entitled to one month's free rent pursuant to section 51. Therefore, the 10 day Notice to End Tenancy which was served on the approved form was effective to end the tenancy unless the tenant paid the outstanding rent within 5 days. He agreed he had not paid the outstanding rent. Therefore, I dismiss his Application to set aside this Notice. I find the landlord entitled to an Order of Possession but he no longer requires this as the evidence is the tenant vacated on April 2, 2016. I decline to consider the section 47 Notice to End Tenancy for cause as it is moot at this point.

In respect to the tenant's request for a refund of his security and pet damage deposits, I find his request is premature as he has not supplied his forwarding address in writing to the landlord. Section 38 of the Act provides the landlord has 15 days from the later of the tenant vacating and providing his forwarding address in writing to file an Application to claim against the deposits. I dismiss this portion of his Application with leave to reapply within the legislated time limits.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. I find his Application for the refund of his security deposit is premature and give him leave to reapply if necessary. I find the tenant not entitled to recover his filing fee due to his lack of success.

The tenant vacated on April 2, 2016 so the landlord does not require an Order of Possession.

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 14, 2016

Residential Tenancy Branch