



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR, CNC, OLC, FF

Landlord's application: OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause and requested orders to suspend or set conditions on the landlord's restricted right to enter the rental unit. The landlords applied for an Order of Possession for unpaid rent, cause, and breach of an agreement; a Monetary Order for damage to the rental unit, unpaid rent or utilities, damage or loss under the Act, regulations, or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenants filed their application on May 6, 2016 and were required to serve their hearing package upon the landlords by May 12, 2016. The tenant testified that she sent a hearing package to each landlord via registered mail by the service deadline although she could not recall the exact date. The landlords confirmed receipt of the tenants' hearing packages.

The tenants' lawyer also prepared an evidence package on behalf of the tenants. The evidence package was sent to the landlord's lawyer on June 1, 2016 via email and fax. The landlords' lawyer argued that service of the tenants' evidence was late and that email is insufficient service and only 10 pages of the fax were received.

The landlords filed their application on May 20, 2016 and were required to serve their hearing package upon the tenants by May 24, 2016. Initially, I heard that that the

landlords sent their hearing packages to the tenants via registered mail on May 20, 2016. The tenants denied receiving the landlords' hearing documents by registered mail and stated that it was done in person. I asked the landlord to provide the registered mail tracking numbers to me. The landlord then changed her testimony to say that the two hearing packages and the landlord's evidence were delivered to the female tenant, in person, at the rental unit on May 31, 2016. As to the reason for the delay, the landlord stated that it took some time to gather their evidence. As to the reason it was given to the female tenant only I heard that the male tenant was working out of town. The female tenant acknowledged receiving the landlords' hearing package and the male tenant acknowledged that he saw the documents his wife received at the end of May 2016 although he did not have time to review it.

Rule 2.11 of the Rules of Procedure deals with making a cross-application. It provides, in part:

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [*Documents that must be served with the hearing package*] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [*Respondent's evidence provided in single package*] can be met.

[my emphasis underlined]

Although the landlords filed their application within time to be considered as a cross application, the deadline for serving their application upon the tenants by May 24, 2016 was critical so as to permit sufficient time for the tenants to receive and respond to the claims against them. I find that by waiting until May 31, 2016 to serve the female tenant only significantly reduced the tenants' response time. Further, serving a monetary claim upon one tenant does not meet the service requirements to serve each tenant within three days of filing as provided under sections 59(3) and section 89(1) of the Act.

Due to insufficient and late service, the landlord's Application was dismissed with leave to reapply. I indicated to the parties that I was prepared to proceed to determine whether the tenancy is at an end based upon the two Notices to End Tenancy served upon the tenants. Both parties indicated that they were prepared to proceed with such a determination. Accordingly, I have made a determination as to whether the tenancy has ended based upon the tenants' applicant that was served upon the landlords.

Although both parties served their evidence late upon the other party, I reviewed and considered the tenancy agreement and the subject Notices to End Tenancy as both parties had provided these documents in their respective evidence packages submitted to the Residential Tenancy Branch, which I confirmed to be duplicate copies, and I was satisfied there was no prejudice to either party by relying these particular documents.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Should the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities be upheld or cancelled?

Background and Evidence

The tenancy started September 1, 2015 and the landlords collected a security deposit of \$2,300.00. Pursuant to the tenancy agreement, the tenants are required to pay rent of \$2,300.00 plus their own utilities for a fixed term expiring August 31, 2016. The tenants had also been paying \$98.00 to the landlords every month toward water and garbage bills although there is no specific provision for this in the tenancy agreement.

On April 12, 2016 the landlords issued a 1 Month Notice to End Tenancy for Cause with a stated effective date of May 31, 2016 (the 1 Month Notice). The landlord's lawyer submitted that the 1 Month Notice was personally delivered to the tenants by the landlord's brother on April 14, 2016 and that on April 15, 2016 the male tenant confirmed its receipt in a telephone conversation with the landlords' lawyer. The female tenant confirmed that a man appeared at the rental unit and delivered the 1 Month Notice to her. The female tenant could not recall the date it was served upon her. The male tenant acknowledged that he did have a telephone conversation with the landlord's lawyer shortly after it was served.

The tenant's lawyer submitted that the tenants are of the position the landlords did not have a basis for issuing the 1 Month Notice. I noted that in filing this application on May 6, 2016 the tenants were outside of the time limit for disputing a 1 Month Notice served on April 14, 2016. The female tenant explained that she had filed an Application for Dispute Resolution prior to the one filed on May 6, 2016 but that after talking to her husband, the male tenant, they decided not to proceed with that application and she cancelled the application without serving the landlords with a copy of it. Upon review of the Residential Tenancy Branch records, I note that the Residential Tenancy Branch received an Application for Dispute Resolution from the tenants on April 19, 2016 and when an Information Officer contacted the tenant on April 21, 2016 regarding the

application the tenant advised the Information Officer that she wished to cancel the application.

A 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served upon the tenants in person on May 5, 2016 (the 10 Day Notice). The 10 Day Notice indicates that rent of \$2,300.00 was outstanding as of May 1, 2016 and \$98.00 in utilities that were demanded in writing on May 1, 2016. Upon receiving the 10 Day Notice the male tenant advised the landlord's lawyer to deposit a cheque that was still in the landlords' possession. The landlords deposited a cheque dated for the month of April 2016 and the cheque cleared. Accordingly, the rent for May 2016 has been satisfied. However, rent for June 2016 has not been paid and the tenants remain in possession of the rental unit.

During the hearing, I informed the parties of my decision to uphold the 1 Month Notice since it was not disputed within the time limit for doing so. The landlords requested an Order of Possession effective as soon as possible. The tenants requested that they permitted occupancy until July 1, 2016 but indicated that they could be out as soon as June 15, 2016.

Analysis

A tenant in receipt of a Notice to End Tenancy has a limited amount of time to dispute the Notice by filing an Application for Dispute Resolution within the applicable time limit for doing so. Under section 47 of the Act, a tenant has 10 days to dispute a 1 Month Notice to End Tenancy for Cause. If a tenant does not file to dispute a 1 Month Notice within 10 days, pursuant to section 47(5), the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice.

I accept that the tenants were served with a 1 Month Notice in person on April 14, 2016 as submitted by the landlords, in the absence of any evidence to contradict that date and considering the tenants had originally submitted an Application to dispute the 1 Month Notice on April 19, 2016. Upon review of the 1 month Notice, I am satisfied that it meets the form and content requirements for a Notice to End Tenancy. Since the tenant cancelled the Application they had submitted on April 19, 2016 without serving a hearing package upon the landlords and did not file the subsequent applicant until May 6, 2016 I find the tenants did not meet their 10 day deadline to dispute the 1 Month Notice. As such, the reasons for its issuance are moot since the opportunity to dispute the reasons has since passed. Accordingly, I dismiss the tenant's request that I cancel the 1 Month Notice and I find the tenancy ended on May 31, 2016.

The landlords are provided an Order of Possession pursuant to section 55(1) of the Act as I am satisfied that all of the criteria have been met. Section 55 of the Act provides:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As to the effective date of the Order of Possession, I provide the landlords with an Order of Possession with an effective date of June 15, 2016. Although I had indicated that I would provide an Order of Possession effective two days after service during the hearing, upon further consideration I provide the Order of Possession effective June 15, 2016 pursuant to the discretion afforded me under section 55(3) of the Act and considering the tenants have, in effect, already paid one-half of June's rent when the landlords' collected a security deposit twice as much as the limitation imposed by section 19 of the Act.

Section 19 provides as follows:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

In light of the above, I order that \$1,150.00 of the \$2,300.00 security deposit paid by the tenants shall be considered payment for the use and occupancy of the rental unit for the period of June 1, 2016 through June 15, 2016 and the balance of \$1,150.00 remains in trust as a security deposit to be administered in accordance with section 38 of the Act.

I further order that until June 15, 2016 the tenants are entitled to quiet enjoyment of the rental unit subject only to the landlord's restricted right to enter in a manner that complies with section 29 of the Act. The landlords are strongly encouraged to familiarize themselves as to the requirements of section 29 of the Act

Having found the tenancy to be at an end pursuant to the 1 Month Notice, I find it unnecessary to further analyze or consider the validity or enforceability of the 10 Day Notice dated May 5, 2016.

Conclusion

The tenant's application to cancel a 1 Month Notice is dismissed and the landlords are provided an Order of Possession effective June 15, 2016. I have ordered that the tenants remain entitled to quiet enjoyment of the rental unit until June 15, 2016 and the landlords may not enter the rental unit unless the entry complies with section 29 of the Act.

I have ordered that \$1,150.00 of the overpaid security deposit is considered to be payment for the tenants' use and occupancy of the rental unit for the period of June 1, 2016 through 15, 2016 and the landlords' continue to hold \$1,150.00 in trust as a security deposit to be administered in accordance with the Act.

The landlords' application was 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: June 08, 2016

Residential Tenancy Branch