



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, FF

Introduction

On June 9, 2016, the Landlord submitted an Application for Dispute Resolution requesting an order of possession; a monetary order for damage to the unit; and to recover the cost of the filing fee for the application.

Both parties appeared at the hearing. The Tenant was assisted by an advocate M.W. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Landlord is seeking a monetary order. Rule 2.3 of the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Landlord's application is whether or not the tenancy will continue. Further, the remainder of the relief being sought by the Landlord is monetary in nature. The Landlord did not provide a monetary worksheet to breakdown how he arrived at his claim. Without details regarding the claim, the Tenant is not able to prepare an answer to the claim. Accordingly, I find it appropriate to exercise my discretion to dismiss the Landlord's monetary claim with leave to reapply at a later date.

Issue to be Decided

Is the Landlord entitled to an order of possession based on a breach of a mutual agreement?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in December 2006, and is a month to month tenancy. Both parties agree that the current rent is \$540.00 per month and that a security deposit of \$250.00 was paid to the Landlord.

The Landlord testified that the Tenant has breached a mutual agreement by not letting him have access to the rental unit to conduct repairs. The Landlord is requesting an order of possession.

The Landlord testified that he had a person deliver a letter dated May 15, 2016, to the Tenant that states the Landlord needs access to the Tenant's unit for an inspection to check if the Tenant has completed cleaning the unit so that a hot water tank can be installed.

The Landlord testified that he sent the Tenant another letter to allow him entry into the rental unit but he could not recall the date of the letter and did not provide a documentary copy.

The Landlord provided documentary evidence of a decision dated March 18, 2016, from the Residential Tenancy Branch where the parties agreed to resolve a dispute. Term #6 from the agreement states:

The Landlord's application, filed February 22, 2016, for an early end to tenancy pursuant to section 56(1), is dismissed with leave to reapply should the Tenant fail to comply with the above, or otherwise prevent the Landlords from addressing the mould issues as provided above.

The Landlord's agent M.G. testified that he went to the rental unit on May 16, 2016, but the Tenant did not answer the door and he did not have a key to enter.

The Landlord testified that the Tenant will not communicate with him. He submits that he has called the Tenant and left numerous voice mail messages but the Tenant will not call him back.

The Landlord's agent M.G. testified that the Landlord D.D. offered him \$300.00 to go clean the unit, but the Tenant refused the offer.

The Landlord testified that he is willing to work with the Tenant and that he wants to get the hot water tank installed and deal with the other repairs to the rental unit.

The Tenant's advocate submits that the Tenant waited all day on May 16, 2016, for the Landlord to appear but nobody came to the door. The Tenant testified that nobody came to my suite.

The Tenant testified that she wants her hot water tank to be replaced and she testified that she will allow access to the Landlord if the Landlord provides proper Notice under the Act.

Section 29 of the *Act* states that a Landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
 - (d) the landlord has an order of the director authorizing the entry;*
 - (e) the tenant has abandoned the rental unit;*
 - (f) an emergency exists and the entry is necessary to protect life or property.*
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

Analysis

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

The Landlord failed to provide the Tenant with proper written notice to enter the rental unit. The written notice of entry does not contain the date and time of the entry as required under section 29 of the *Act*. The Landlord did not provide any other documentary evidence to support his testimony that the Tenant is not allowing access to the rental unit or that the Tenant is breaching the terms of the agreement. I find that the Landlord has provided insufficient evidence to establish that the Tenant is not allowing access to the rental unit.

The parties are reminded that they are expected to comply with the agreement they reached on March 18, 2016.

The Landlord's application for an order of possession due to a breach of an agreement is dismissed. The Landlord has leave to reapply for the monetary claim that was severed from this hearing.

The tenancy continues until ended in accordance with the Act.

As the Landlord was not successful with his application, I do not grant recovery of the filing fee for his application.

Conclusion

The Landlord's application is dismissed. The tenancy continues until ended in accordance with the Act. The Landlord has leave to reapply for the monetary claim that was severed from this hearing.

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: July 12, 2016

Residential Tenancy Branch