



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, MNR, MNSD, OPL, OPR, OPC

Introduction

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

The landlords' 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 cancel a 1 Month Notice to End Tenancy for Cause, issued on Return all or part of the security deposit;
2. To recover the cost of emergency repairs; and
3. To allow a tenant to reduce rent for repairs.

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. The balance of the tenant's applications are dismissed, with leave to re-apply.

Issues to be Decided

Are the landlords entitled to an order of possession based on unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to keep the security deposit in partial satisfaction of the claim?

Should the 1 Month Notice to End Tenancy for Cause for cause be cancelled?

Background and Evidence

The parties agreed that WS and LW, purchased the property from CW, and a 2 Month Notice to End Tenancy was served on the tenant with an effective vacancy date of July 31, 2016. That notice was not disputed by the tenant and is only referred to in my decision because the tenant was not required to pay rent for July 2016. Section 51 of the Act, allows the tenant to withhold the last month's rent as compensation for receiving the above notice.

The landlords' testified that after the 2 Month Notice was issued the tenant failed to pay rent for June 2016. The landlords stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued and served in person on June 6, 2016.. The landlords stated that no rent has been paid since the notice was issued.

The landlords submit that the tenant provided a cheque for June 2016 that was non-negotiable. Filed in evidence is a copy of a letter from the financial institute, with a copy of the cheque issued for June 2016, rent. The letter reads in part,

"I ... have completed an account search to determine the ability of this cheque to be valid. Upon doing a search nothing came up when I inquired into the account number. This would lead me to believe that the account has been closed for some time. This cheque would be returned if it was deposited into an account a mostly likely flagged for fraud."

[Reproduced as written]

The tenant acknowledged that they received the notice to end tenancy; however, the tenant indicated that they did not receive the returned cheque from the financial institute until recently. The tenant acknowledged rent for June 2016, is outstanding.

Analysis

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

The tenant did not apply to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 6, 2016, and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which was June 16, 2016. I find the tenant is now overholding the rental unit.

Even if the tenant did dispute the 10 Day Notice to End Tenancy for Unpaid Rent which they did not, they did not pay rent for June 2016, issuing a cheque that is not negotiable is solely the fault of the tenant. As the tenant should have known or ought to have known that it was not valid at the time the cheque was issued and may have been an attempt to commit fraud as suggested by the financial institution.

As the tenancy legally ended on June 16, 2016, I find that the landlords are 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.

As I have found the tenant is overholding the rental unit and occupancy rent for July 2016, has not been paid, I find the tenant has received compensation under the Act, equivalent to one month rent as required by the 2 Month Notice to End Tenancy.

I find that the landlords have established a total monetary claim of **\$1,100.00** comprised of unpaid rent for June 2016, and the **\$100.00** fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$600.00**. 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 WS and LW are the new landlords the above monetary order will be payable to them.

As the tenancy has legally ended based on unpaid rent, I find it not necessary to consider the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause.

Conclusion

The tenant failed to pay rent. The landlords are granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 14, 2016

Residential Tenancy Branch