



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made August 17, 2016: CNC; DRI; OLC

Landlord's Application made August 19, 2016: OPC; MNSD; MND; FF

Introduction

This Hearing dealt with cross Applications for Dispute Resolution.

The Landlord seeks an order of possession; a monetary order for damages; to set off the security deposit in partial recovery of her monetary award; and to recover the cost of the filing fee for the Application.

The Tenant seeks to cancel a Notice to End Tenancy for Cause issued August 7, 2016; to dispute an additional rent increase; and an order that the Landlord comply with the Act, regulation or tenancy agreement. The Tenant did not provide sufficient details in his Application for Dispute Resolution with respect to which section of the Act, regulation or tenancy agreement he was seeking the Landlord's compliance. Therefore, this portion of his Application is dismissed.

Rule 2.3 of the Rules of Procedure provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the Tenant's request to dispute an additional rent increase is not sufficiently related to the parties' claims with respect to the Notice. Therefore, this portion of his Application is dismissed with leave to reapply.

I find that the Landlord's application for compensation for damages to the rental unit, and to set off the security deposit, is premature. At the time the Landlord made her Application, the tenancy had not ended. A tenant is entitled to make repairs at the end of the tenancy. Therefore, this portion of the Landlord's application is dismissed with leave to reapply.

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 to me.

The Tenant stated that he the Notice was posted to his door and received on August 8, 2016.

The Tenant acknowledged receipt of the Landlord's Notice of Hearing package and documentary evidence.

The Landlord acknowledged receipt of the Tenant's Notice of Hearing package. The Tenant could not recall when the Landlord was served with copies of the Tenant's documentary evidence. The Landlord stated that she did not receive the Tenant's documents. I explained to the Tenant that there was insufficient proof of service of his documentary evidence and invited him to give me his oral testimony with respect to its contents.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Is the Notice valid or should it be cancelled?

Background and Evidence

This tenancy began on June 15, 2012. Monthly rent at the beginning of the tenancy was \$2,300.00, due on the first day of each month. The tenant paid a security deposit in the amount of \$1,150.00 and a pet damage deposit in the amount of \$200.00 at the beginning of the tenancy. Current monthly rent is \$2,550.00.

On August 7, 2016, the Landlord issued a One Month Notice to End Tenancy for Cause (the "Notice"). The Tenant acknowledged receiving the Notice on August 8, 2016.

The Landlord's agent AK stated that the Tenant has been repeatedly late paying rent. AK testified that even when the payments were made, the cheques would bounce. AK testified that the Landlord's own bank credit is now suffering because the Tenant does not pay rent on time. AK stated that the Tenant's cheques were deposited late on the following dates:

Deposited
September 22, 2015 \$5,100.00
November 2, 2015 \$5,100.00
January 4, 2016 \$5,100.00
May 17, 2016 \$3,000.00

Returned NSF
September 28, 2015
November 5, 2015
January 7, 2016
May 19, 2016

AK testified that September, 2016 rent was also paid late. The Landlord provided copies of “returned item notices” from her bank.

The Tenant stated that he has been out of the country “for 2 or 3 years”. He testified that there is a 2 day delay when sending money from overseas, and that there were additional problems with “money exchange”. He stated that he is now up to date with rent payments and that the Landlord always accepted his late rent.

Analysis

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

The Notice includes the following reason for ending the tenancy:

Tenant is repeatedly late paying rent.

Section 26(1) of the Act provides:

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.

Section 47(1)(b) of the Act provides, in part:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

A tenant is considered to be “repeatedly late” if rent is late three or more times. I find the Notice to end tenancy is valid and should be enforced. Therefore, **I dismiss the Tenant’s Application** to cancel the Notice. **I find the Tenant is in breach of the Act and tenancy agreement**, and the Landlord is entitled to an order of possession.

The effective date of the Notice is September 30, 2016; however, the Landlord requested the order be effective October 31, 2016.

Conclusion

I grant the Landlord an order of possession for the rental unit effective at 1:00 p.m. October 31, 2016. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord has been partially successful in her Application and I find that she is entitled to recover the cost of the \$100.00 filing fee. Pursuant to the provisions of Section 72 of the Act, **the Landlord may deduct \$100.00 from the security deposit** in satisfaction of this portion of her claim. The remainder of the security deposit and the pet damage deposit must be applied in accordance with the provisions of the Act.

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: October 12, 2016

Residential Tenancy Branch