



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Oak Villa
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF, CNR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord(s). Both files were to be heard together; however the landlords did not join the conference call that was scheduled for the hearing and therefore the landlord's application has been dismissed, with leave to reapply, and I dealt solely with the tenant's application.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the tenant the opportunity to give evidence orally.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the tenant has put on his application.

Section 2.4 of the rules of procedure states:

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.

In this case it is my finding that not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel the 10 day Notice to End Tenancy that was given for nonpayment of rent, and I dismiss the monetary claim with liberty to re-apply.

Background and Evidence

The tenant testified that he originally told the landlords he would pay the rent on the 15th of the September 2016, and just pay the \$25.00 late payment fee.

The tenant testified that he subsequently received the Notice to End Tenancy on September 4, 2014.

Tenant further testified that he applied for dispute resolution on September 12, 2016.

The tenant further stated that he wants the Notice to End Tenancy canceled as the landlord is refusing to accept any rent.

Analysis

Section 46(1) of the Residential Tenancy Act states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Sections 46(4) & 46(5) of the Residential Tenancy Act state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

46 (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The tenant has admitted that he failed to pay the rent on the first of the month when it was due, and therefore the landlord did have the right, under section 46(1) of the Residential Tenancy Act, to give a 10 day Notice to End Tenancy.

The tenant also admitted that he received the Notice to End Tenancy on September 4, 2016; however he did not apply for dispute resolution until September 12, 2016, eight days after receiving a notice.

Therefore, since the tenant did not file his dispute within the five day time limit, pursuant to section 46 (5), the tenant is conclusively presumed to have accepted that the tenancy ends and must vacate the rental unit.

It is my decision therefore that I will not cancel the Notice to End Tenancy.

Conclusion

As stated previously the landlord's application is dismissed with leave to reapply.

The tenant's application to cancel a Notice to End Tenancy is dismissed without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, pursuant to Section 55 of the Act, enforceable 2 days after service on the tenant.

The monetary portion of the tenant's application is 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: November 03, 2016

Residential Tenancy Branch