



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC, MNR, MNSD, OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to cancel both a one-month Notice to End Tenancy, and a 10 day Notice to End Tenancy, and a request for a Monetary Order for \$5600.00.

The landlord's application for an Order of Possession based on both a one-month Notice to End Tenancy, and a 10 day Notice to End Tenancy, and a request for a Monetary Order for \$11,110.00.

A substantial amount of documentary evidence, photo evidence, digital 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 parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All parties were affirmed.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicants have put on these applications.

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 these applications are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the requests to cancel or uphold the 2 Notices to End Tenancy, and I dismiss the remaining monetary claims with liberty to re-apply.

Background and Evidence

The parties agree that this tenancy began on September 1, 2015 and that the present monthly rent is \$500.00, due on the first of each month.

The landlord testified that they did not receive the October 2016 rent when it was due on October 1, 2016, and therefore on October 2, 2016, the tenant was served with a 10 day Notice to End Tenancy.

The landlord further testified that the tenant's rent is paid directly from the Ministry of Social Services; however, although the rent check was dated properly they did not receive it until approximately October 10 or 11th, 2016.

The landlord's further testified that when they did receive the check there was some writing on the outside of the envelope that appeared to redirect the check to the proper address, and therefore they believe it may have originally been mailed to an incorrect address. They further stated they have not supplied a copy of this envelope in their evidence package.

The landlord's further testified that all rent collected, since the 10 day notice was given, has been accepted for use and occupancy only.

The landlord further testified that a one month Notice to End Tenancy was given to the tenant on September 30, 2016, due to an assault that occurred on August 18, 2016.

Landlord testified that a notice was not given on the proper form immediately after the assault; however they did give the tenant a letter on August 29, 2016 stating that they would not be renewing the lease.

The landlord further testified that on August 18, 2016, the day of the assault, he had originally gone to the front door however when no one answered he went around the back and found the tenant's wife on the back porch. He further states that at that time she verbally abused him and then he she pushed him and he almost fell over backwards.

The landlord's witness testified that he was present on August 18, 2016; however he did not witness any physical assault, but he did hear the tenants wife being verbally abusive and using very foul language.

The landlord's witness further stated that at that time the landlord did not tell him he had been assaulted, and when questioned about the witness letter he had supplied for the hearing today the witness stated that he did not write that letter someone else wrote it and he just signed it. He also stated he is not aware of what is in the letter.

Analysis

As far as the 10 day Notice to End Tenancy is concerned it is my finding that the landlord has not met the burden of proving that the tenant did not pay the rent on time, or within the five day grace period. The landlord has testified that they received the rent from the Ministry of Social Services, on approximately October 10 or October 11, 2016 with a note written on the outside of the envelope, however they have failed to provide a copy of that envelope with their evidence package. Considering the animosity between the parties I believe it's possible that the landlord simply held onto the check and did not cash when it was first received.

It is my decision therefore that I will cancel the 10 day Notice to End Tenancy.

As far as the one month notices concerned, it is my finding that the landlords have not met the burden of proving that the tenant's wife assaulted the landlord, and in fact it appears that some of the landlord's evidence has been fabricated.

In the landlords testimony he stated that the tenant's wife had pushed him, causing him to almost fall over backwards, and he also stated that his witness was present at the time and he informed him of the assault. The witness however testified that although he heard some verbal abuse from the tenant's wife he did not witness the assault nor did the landlord tell him he had been assaulted.

This witness testimony does not come close to the information that was written in the witness letter signed by the witness, and therefore, it appears to me that the witness

letter, that was prepared for Mr. P to sign, was a fabrication, as in that letter the landlord has alleged to have told the witness that he was assaulted, and that he was assaulted with bricks.

It is my finding therefore that there are too many inconsistencies in the landlords evidence, and the landlord therefore has not met the burden of proving the reasons given on the one month Notice to End Tenancy

Conclusion

Landlord's application

Pursuant to section 62 of the Residential Tenancy Act, the landlord's application for an Order of Possession is dismissed without leave to reapply.

The landlord's application for a Monetary Order is dismissed with leave to reapply.

Tenant's application

Pursuant to section 62 of the Residential Tenancy Act, I hereby order that the ten-day Notice to End Tenancy, which is dated October 02, 2016, and the one month Notice to End Tenancy, which is dated September 30, 2016, are both canceled and this tenancy continues.

The tenant's application for a Monetary Order 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: December 01, 2016

Residential Tenancy Branch