



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on January 9, 2017, for monetary money owed or compensation for damage or loss under the Act, to have the landlord comply with the Act, regulation or tenancy agreement, to make emergency repairs, and to allow a tenant to reduce rent for repairs.

Both parties appeared, gave 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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 application is dismissed, with leave to reapply.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 1, 2016. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant.

The advocate for the tenant stated that the tenant received the Notice. The advocated stated that the rent for January 2017 and February 2017, have not been paid. The advocated confirmed the tenant did not have the authority under the Act to withhold rent.

The advocated stated that the rental unit was not in satisfaction condition as there was a mouse infestation in the rental unit and they attempted to pay rent and negotiate with the landlord on January 11, 2017 and again on February 3, 2017.

The landlord testified that they have not refused to accept rent. The landlord stated that when they went to the rental unit to collect rent in January 2016, they were told by the tenant that they did not have the rent. The landlord stated they want the tenancy to end.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed. Rent was not paid by the tenant.. The tenant did not have the authority under the Act to withhold rent whether or not the landlord was breaching the Act.

While the advocated stated they tried to negotiate with the landlord on January 11, 2017 and the tenant had the rent. However, this statement leads me to believe this was simply a negotiation on the rent. Not that the tenant had the intent to pay rent in full, even if the landlord did not want to negotiate. Further, the landlord stated that rent was never refused and they were told by the tenant that they did not have the rent.

I am satisfied that the tenant breached the Act, when they failed to pay rent for January 2017 and February 2017. I find the Notice is a valid Notice under the Act. Therefore, I find the tenancy has legally ended in accordance with the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is 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.

Conclusion

The tenant failed to pay rent. The tenant's application is dismissed. The landlord is granted an order of possession.

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: February 09, 2017

Residential Tenancy Branch