



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, ERP, PSF, RR

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
2. To have the landlord make emergency repairs;
3. For a monetary order for the cost of emergency repairs already made;
4. Return all or part of the security deposit;
5. To have the landlord comply with the Act;
6. To have the landlord provide services or facilities required; and
7. To recover the cost of filing the application.

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. The balance of the tenant's application is dismissed, with leave to reapply.

Issues to be Decided

Is the landlord entitled to an order of possession?

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled.

Background and Evidence

The tenant testified that they received the Notice on February 16, 2017. The tenant stated that they have not paid January 2017, rent. The tenant stated that the landlord has not done repairs.

The tenant testified that the landlord agreed in a letter that they would waive January and February 2017, rent.

The landlord's agent testified that landlord did send a letter to the tenant; however, the tenant did not respond. The landlord stated the landlord seeks an order of possession. Filed in evidence is a copy of the letter.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.*

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 as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act by not making repairs.

However, the tenant did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so.

Further, even if I accept the landlord agreed to waive January and February 2017, in a letter; the letter was written in February 2017, after both applications were filed. The letter clearly shows that the landlord was not reinstating the tenancy as they are trying to make arrangements to pick up the keys on February 24, 2017, and end the tenancy amicably.

Based on the above, I find the Notice issued on January 16, 2017, is a valid Notice. Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy has legally ended in accordance with the Act.

As the tenant's application is dismissed, pursuant to section 55 of the Act, I must grant the landlord an order of possession.

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.

As the landlord was successful with their application, I find the landlord is entitled to a monetary order in the amount of \$100.00. I grant the landlord a formal order pursuant to section 67 of the Act.

The landlord may deduct the above amount from the tenant's security deposit, if one was paid, or 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.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order.

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 21, 2017

Residential Tenancy Branch