



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, PSF, RR, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); and
- cancellation of the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice").

The landlord and tenants appeared at the teleconference hearing and were affirmed to give testimony. Only Tenant S.R. (the "Tenant") gave actual testimony as the other tenants, who are family members, were observers. The landlord appeared with a witness, S.J., who was also affirmed, but who did not give any testimony. During the hearing the landlord and the tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the tenants' application I have determined that I will not deal with all the dispute issues the tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the notices to end the tenancy. Therefore, I will deal with the tenants' requests to cancel the 10 Day Notice; to cancel the One Month Notice and to recover the filing fee for their application from the landlord.

I dismiss the balance of the tenants' application with leave to reapply. I note this decision does not extend any applicable time limits under the *Act*.

The tenants were served with three One Month Notices to end the tenancy and two 10 Day Notices to end the tenancy. Accordingly, I will address these Notices in my decision.

Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled?
- Should the landlord's One Month Notices be cancelled?

Background and Evidence

The undisputed evidence established that the tenant entered into a tenancy agreement with the previous landlord starting on October 1, 2006. The previous landlord sold the property to the current landlord who took over on June 1, 2011. The tenant signed a new tenancy agreement with the current landlord on October 1, 2011. Under the new tenancy agreement, the tenancy was for a one year fixed term starting October 1, 2011 and ending on September 30, 2012. The tenancy has since continued on a month to month basis. Rent in the amount of \$1,350.00 is due each month with \$650.00 due on the 6th and 21st of each month. The tenancy agreement indicates that a security deposit in the amount of \$650.00 was paid to the previous landlord on September 6, 2006.

The One Month Notices

The landlord issued a One Month Notice on September 13, 2016 with an effective move out date of October 31, 2016. The landlord did not indicate the reason for ending the tenancy on the One Month Notice. This One Month Notice was left in the tenant's mail slot on November 3, 2016. (the "First One Month Notice")

The landlord issued a second One Month Notice on November 11, 2016 with an effective move out date of December 10, 2016. The landlord indicated on the notice that the reason for ending the tenancy was that the tenant is repeatedly late paying rent. The tenant testified that he received this One Month Notice in his mailbox on November 14, 2016. (the "Second One Month Notice")

The landlord issued a third One Month Notice on November 16, 2016 with an effective move out date of December 31, 2016. The landlord indicated on the notice that the reason for ending the tenancy was that the tenant is repeatedly late paying rent. The

tenant testified that he received this One Month Notice in his mailbox on November 18, 2016. (the "Third One Month Notice").

The tenants made their application to dispute the One Month Notices on November 22, 2016.

The landlord testified that the tenant paid the rent due for the month of April 2016 on May 11, 2016 and that the tenant was also late paying rent due for the months of June, July and August.

The tenant testified that he paid the rent that was due for the month of April 2016 when it came due. The tenant testified that he made his two rent payments on April 5th and 21st by cheque which he put in the landlord's mail slot. The tenant testified that he was surprised by the landlord's allegation that the rent due for April 2016 was paid late.

The landlord also claimed that the tenant had a cheque returned for insufficient funds but could not provide any other details including the month when this allegedly occurred. The tenant denied the landlord's allegation stating that there was never a problem with any cheque issued by the tenant for rent.

The tenant acknowledged that he withheld rent that was due for each of the months of June, July and August 2016, however, the tenant testified that it was by agreement. The tenant testified that on April 3, 2016 he informed the landlord that their bathroom window frame was broken. The tenant testified that it took the landlord four months and two weeks to finally replace the window properly. In the interim, the tenant withheld rent as the landlord had promised to repair the broken window and didn't follow through. By June 2016, the tenant was upset and angry about the delay with the repairs and informed the landlord that he would not pay rent until the window was fixed properly.

The tenant submitted excerpts from emails between the tenant and the landlord which the tenant had translated from Korean into English by a professional translator. The tenant submitted a copy of the receipt for the translation services. The landlord did not dispute the translation. The tenant relied upon the emails as proof that the landlord had agreed to allow the tenant to withhold rent until the repairs were complete.

The tenant referred to an email dated August 23, 2016 from the landlord to the tenant wherein the landlord offered to reduce the rent by \$500.00 and asked the tenant to pay the outstanding rent for June, July and August, less the \$500.00 rent rebate, by September 10, 2016. The landlord also asked the tenants to start paying rent for September 2016 as normal.

The tenant also provided earlier emails between the tenant and the landlord dating back to June 2016 through to August 2016 as proof that the landlord accepted the tenant's withholding of rent without any complaints or demands until the landlord's email dated August 23, 2016.

The tenant testified that he complied with the landlord's request and paid the rent for June, July and August by September 10th, 2016. The tenant testified that since September he has been paying the rent when it is due.

The landlord denied that there was an agreement that allowed the tenant to withhold the three months of rent and pay it late.

The tenants are seeking to cancel the One Month Notices and to have the tenancy continue.

The 10 Day Notice

After issuing the One Month Notices, the landlord then issued two 10 Day Notices.

The landlord issued a 10 Day Notice to end the tenancy on November 3, 2016 with an effective move out date of November 13, 2016. There was no unpaid rent indicated on the Notice.

The landlord issued a second 10 Day Notice to end the tenancy on December 1, 2016 with no effective move out date indicated on the Notice. The landlord set out the amount of unpaid rent as \$45,550.00 due on December 30, 2016. The landlord testified that the 10 Day Notice was served in person on December 1, 2016. The tenant testified that the landlord didn't serve the tenant in person and instead the landlord emailed the 10 Day Notice to the tenant on December 13, 2016.

After receiving the 10 Day Notice on December 13, 2016, the tenants amended their application on December 14, 2016 to also dispute the 10 Day Notice.

The landlord testified that he set out the amount of \$45,550.00 shown on the 10 Day Notice as unpaid rent because he wants the tenants out of the rental unit. The landlord argued that the tenants do not appreciate the great deal they have with the rent they pay and instead they complain about problems.

The tenant testified that there was no unpaid rent owing to the landlord when the Notices were issued.

The tenants are seeking to cancel the 10 Day Notice issued on December 1, 2016 and to have the tenancy continue.

Analysis

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

The One Month Notices:

As the tenant's application is to dispute the second and third One Month Notices, there is no need for me to address the first One Month Notice issued on September 13, 2016. If the tenant had disputed this Notice, I would have found that it is not a valid Notice due to the absence of reasons given for ending the tenancy.

Section 47(1)(c) of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Policy Guideline #38 explains that a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

I find that the tenant paid the rent when it came due except for each of the months of June, July and August 2016 which the tenant paid in full by September 10, 2016. I accept the testimony of the tenant that the rent for April 2016 was paid when it came due; and that there was never a late rent payment due to insufficient funds as alleged by the landlord. I find that the landlord's evidence lacks credibility as there is sufficient evidence to conclude that the landlord has likely given false testimony which I outline below.

I find that there is sufficient evidence that the landlord explicitly waived reliance on section 47(1)(c) of the *Act*. In making this finding I accept the evidence of the tenant that the landlord allowed the tenant to withhold the rent due for June, July and August 2016 in response to the delay in repairing the damaged window. The landlord's email to the tenant on August 23, 2016 confirms the tenant's testimony. I find that the landlord's oral evidence is clearly contradictory to the unopposed evidence of what was said in the emails exchanged by the parties. As a result, I have given the evidence of the landlord little weight.

I have also taken into account that the landlord's first attempt at taking any action was by serving a One Month Notice on November 3rd, 2016, followed by two more on November 13th and the 16th. As the alleged issues arose several months earlier, I find that the landlord failed to act in a timely manner before taking any steps to enforce section 47(1)(h) of the *Act*, amounting to a waiver of this provision by the landlord.

Based on the foregoing, I find that the tenant is entitled to cancellation of both One Month Notices issued on November 11th and 16th, 2016.

The 10 Day Notice:

As the tenants' application is to dispute the second 10 Day Notice, I will not address the first notice issued on November 3, 2016. If the tenant had disputed this Notice, I would find that it is not a valid Notice as there is no amount indicated for unpaid rent.

I find that the second 10 Day Notice issued December 1, 2016 is not a valid Notice in accordance with section 52 of the *Act*. This notice is missing an effective move out date.

In any event, I find that the tenant didn't owe any amount for unpaid rent when the 10 Day Notice was issued on December 1, 2016. The landlord's only explanation for the amount of \$45,000.00 in the 10 Day Notice was that he wanted the tenant to move out. This is clearly a fictitious amount that the landlord is not entitled to.

Based on the foregoing, I find that the tenant is entitled to cancellation of the 10 Day Notice issued on December 1, 2016.

As the tenants' application was successful, I find that the tenants are entitled to recovery of the filing fee from the landlord. I authorize the tenants to deduct the \$100.00 from a subsequent month's rent.

Conclusion

I cancel each of the One Month Notices to end the tenancy issued on November 11, 2016 and November 16, 2016 and the tenancy will continue until ended in accordance with the *Act*.

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I cancel the 10 Day Notice to end the tenancy issued on December 1, 2016 and the tenancy will continue until ended in accordance with the *Act*.

The tenants are awarded recovery of the filing fee and are authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

The balance of the claims set out in the tenants' application are dismissed with leave to reapply as they are unrelated. I note this decision does not extend any applicable time limits under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 1, 2017

Residential Tenancy Branch