



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, RPP, RP, ERP, LAT, LRE, PSF, RR, MNDC, MNR, FF,

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution filed March 30, 2017 in which the Tenant sought the following relief:

- an Order canceling a 2 Month Notice for Landlord's Use;
- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued March 26, 2017;
- an Order that the Landlord return the Tenant's property;
- an Order that the Landlord make repairs, emergency and otherwise;
- an Order authorizing the Tenant to change the locks on the rental unit;
- an Order restricting the Landlord's right to enter the rental unit;
- an Order that the Landlord provide services of facilities required by law;
- an Order that the Tenant be permitted to deduct the cost of repairs, services or facilities from the rent; and,
- a Monetary Order for:
 - money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement,
 - the cost of emergency repairs, and
 - recovery of the filing fee.

The hearing was conducted by teleconference on May 2, 2017. Both parties called into the hearing and were given an opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

During the hearing, the Tenant noted that on the Notice of Dispute Resolution Hearing letter from the Residential Tenancy Branch, dated March 31, 2017, the address of the

rental unit was that of the Landlord, not the rental unit. As both parties attended the hearing, I find this clerical error to be of no consequence.

No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Unrelated claims

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Tenant sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use. Based on my review of the material, no such Notice was issued.

It is my determination that the priority claim in the within action, is the Tenant's application for an Order canceling the 10 Day Notice to End Tenancy. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. I find that the question of the continuation of this tenancy is not sufficiently related to the Tenant's other claims.

I therefore, exercise my discretion to dismiss the balance of the Tenant's claims and only dealt with the Tenant's application for an Order canceling the 10 Day Notice.

Issue to be Decided

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

Background and Evidence

S.M. testified as follows.

He confirmed that he was not aware of when the tenancy began, only to say that the tenancy has been going on for two to four years. He stated that the person who was

managing the property before him, is very old and is suffering from memory loss, such that he is not able to provide more specific details.

S.M. stated that he has been managing the property since the fall of 2016. He further stated that he has had power of attorney, which was given to him by the property owners, M.A., C.A., and M.A., effective March 21, 2017.

S.M. stated that monthly rent was payable in the amount of \$792.00. He confirmed that the Tenant has not paid rent since April 2015, and as such the amount outstanding is \$17,424.00 as of March 1, 2017.

The Tenant testified that she moved into the rental unit in October of 2009. She confirmed that she was obligated to pay \$791.67 in monthly rent.

The Tenant also confirmed that she has not paid rent since April of 2016 and agreed that the rent owing is \$10,291.71.

The Tenant failed to submit any evidence to support her claim for the cost of repairs, save and except for a hand written document wherein she writes she "had to pay myself \$450.00 for a new pump 2015". Even in the event this is accepted, the amount the Tenant owes for rent is significantly more.

The Tenant also confirmed that she has been dealing with S.M. since November of 2016 as agent of the property owners.

Analysis

Based on the testimony and evidence before me and on a balance of probabilities, I find as follows.

Landlord is defined in section 1 of the *Residential Tenancy Act* as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that S.M. is an agent of the Landlord and therefore was authorized to issue the 10 Day Notice.

S.M. testified that the Tenant is obligated to pay monthly rent of \$792 and has failed to pay rent since April 2015. The Tenant confirmed her rent is \$791.67 and stated that she has not paid rent since April 2016 such that she agreed at least \$10,291.71 is owed for rent.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

The Tenant's Application for an Order canceling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

Section 55 of the *Act* provides as follows:

- 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.

As I have dismissed the Tenant's Application, find that the Landlord is entitled to an Order of Possession 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 as required and is therefore in breach of the *Act*. Pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession, effective two days after service on the Tenant.

The balance of the claims made in the Tenant's Application for Dispute Resolution, are dismissed with leave to reapply. As the tenancy is ending, any relief related to the continuation of the tenancy is not applicable.

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: May 02, 2017

Residential Tenancy Branch