



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNL, CNR, RP, OLC, MNR, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession pursuant to a notice to end tenancy for non-payment of rent and for a monetary order for unpaid rent. The tenant applied to cancel the notices to end tenancy for non-payment of rent and for landlord's use of property. The tenant also applied for an order directing the landlord to comply with the *Act* and make repairs.

The notice to end tenancy for landlord's use of property was served on the tenant in person, on May 08, 2017. The tenant filed a copy of the notice into evidence. The notice was in the two page format which clearly notifies the tenant about the 15 day time frame within which to dispute the notice. Since the tenant is deemed to have received the notice on May 08, 2017, and applied to dispute the notice on July 07, 2017, I find that the tenant has not made application to dispute the notice within the legislated time frame. Accordingly the tenant's application to dispute the notice to end tenancy for landlord's use of property is dismissed.

Since the tenant did not dispute the notice in a timely manner the tenant is deemed to have accepted the notice and should have moved out by the effective date of the notice which is July 31, 2017. As of the date of the hearing (August 30, 2017), the tenant had not moved out and continues to occupy the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The tenant agreed that he had provided the landlord with a second package of evidence on the morning of this hearing. The landlord stated that she did not accept this package and therefore it was not used in the making of this decision.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy for non-payment of rent be set aside? Is the landlord entitled to a monetary order? Is the tenant entitled to the remedies that he has applied for?

Background and Evidence

The tenancy started on November 23, 2016. The rent is \$750.00 per month due on the first of each month. The tenant paid a security deposit of \$375.00 which he testified that he had used towards rent for July 2017.

As stated above, on May 08, 2017, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The effective date of the notice was July 31, 2017. The tenant accepted the notice but did not move out on the effective date of the notice.

The tenant paid partial rent for June 2017. On June 29, 2017, the landlord served the tenant with a ten day notice to end tenancy for non-payment of rent. The tenant disputed the notice in a timely manner but agreed that at the time of the hearing, he owed rent for August. The landlord stated that the tenant owed rent for June (\$370.00), July (\$375.00) and August (\$750.00).

The tenant denied owing rent for June and July 2017. He stated that the landlord verbally told him that he could pay half month's rent for these two months as compensation for a notice to end tenancy for landlord's use of property. The landlord denied having given the tenant permission to pay partial rent for June and July 2017.

The tenant argued that he was entitled to compensation in the amount of one month's rent pursuant to the notice to end tenancy for landlord's use of property and he availed himself of this compensation by paying half a month's rent for June and using his security deposit to pay half a month's rent for July. The tenant was adamant that he did not owe rent for the months of June and July but agreed that he owed \$750.00 for August 2017. His argument was that the rent that he withheld was compensation pursuant to the notice to end tenancy for landlord's use of property.

During the hearing, I explained to the tenant that pursuant to section 51(1.1) of the *Residential Tenancy Act*, he may withhold rent from the last month of tenancy. The effective date of the notice to end tenancy was July 31, 2017.

Therefore by withholding rent from June 2017, the tenant breached the *Act*. In any event the tenant did not move out on the effective date of the notice and therefore was required to pay full rent for every month of tenancy.

During the hearing the landlord agreed to waive her right to all unpaid rent and requested an order of possession.

The tenant spoke at length about the landlord not providing rent receipts, serving him with multiple notices to end tenancy and asking him to remove his possessions from the yard. The tenant also spoke about the notice to end tenancy for landlord's use of property being served in bad faith.

Analysis

Landlord's Application

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant was deemed to have received the notice to end tenancy for unpaid rent dated June 29, 2017, on July 02, 2017 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. As of July 02, 2017, the tenant owed \$370.00 for the month of June 2017 which he failed to pay and still owed as of the date of this hearing. In addition the tenant used his security deposit for rent for July and failed to pay the balance owed. The tenant also failed to pay rent for August.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

Since I have upheld the notice to end tenancy for non-payment of rent, it is not necessary to address the other notice to end tenancy. Even though the tenant accepted the notice to end tenancy for landlord's use of property, he did not move out on the effective date of the notice and continued to occupy the rental unit. Therefore the tenant would not be entitled to a rent free stay for the month of July 2017.

However the landlord has waived her right to collect all rent owed and therefore the tenant has received compensation that he would not have been entitled to. Since the landlord forgave rent owed by the tenant, I dismiss the landlord's claim for a monetary order.

Tenant's application:

I have upheld the notice to end tenancy for non-payment of rent and the landlord has been granted an order of possession. Since the tenancy is ending, the tenant's application for an order directing the landlord to comply with the *Act* and carry out repairs is moot and accordingly dismissed.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant.

The tenant's application is dismissed in its entirety. The tenancy has ended pursuant to a ten day notice to end tenancy for non-payment of rent.

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: August 30, 2017

Residential Tenancy Branch