



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR CNC MNDC ERP PSF RP RR
Landlord: OPR MNR FF

Introduction

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied January 24, 2017 to cancel the landlord's Notices to End for unpaid rent and for cause, as well as for a Monetary Order for \$35,000.00, a reduction of rent, emergency repairs and for services or facilities agreed upon but not provided. The landlord applied July 14, 2017 for an Order of Possession pursuant to Notices to end for unpaid rent and cause, and to recover their filing fee.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. The parties were given opportunity to mutually resolve their disputes to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. It is my decision that I will not deal with all the dispute issues that the tenant has placed on their application. Not all the claims on this application are sufficiently related to the main issue of the tenancy's survival to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the landlord's Notices to End Tenancy, and I

dismiss the balance of the tenant's claims with liberty to re-apply. It must be noted that the tenant did not provide testimony in respect to matters of urgency.

Issue(s) to be Decided

Is the notice(s) to end tenancy valid?

Should the Notice(s) be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover their filing fee?

Background and Evidence

The undisputed testimony is that the tenancy started March 26, 2017. The rental unit is shared by the 2 applicants in this matter under one agreement for the rental unit. There is no written tenancy agreement in this matter. The parties agreed that the amount of \$1000.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$500.00 which they retain in trust. The tenants failed to pay all rent in the month of July 2017 and on July 03, 2017 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent of \$500.00. The tenant applied to dispute the notice however both parties agreed the outstanding rent was satisfied within 4 days. The tenant further failed to pay all rent in / for the month of August 2017 however satisfied the outstanding rent soon after.

On July 03, 2017 the landlord served the tenant with a 1 Month Notice to End Tenancy for cause for the reason the tenant had *breached a material term of the tenancy agreement which was not corrected within a reasonable time after notice to do so*. The landlord claims on their Notice to End that prior to July 03, 2017 the tenant smoked inside the rental unit, but did not testify in this respect during the hearing. Instead, the landlord provided their notes that on June 28, 29 and 30, 2017 they witnessed the tenant smoking outdoors on the residential property, which the tenant did not dispute. The parties disagreed as to their agreement respecting smoking on the residential

property. The landlord claims their oral agreement was that no smoking would occur on the property. The tenant's recollection is that their agreement solely restricted smoking inside the rental unit. The tenant acknowledged that some time after receiving the 1 month Notice for cause they smoked inside the unit on one occasion, "in protest" and frustration with the landlord, but it is undisputed it has occurred since. It is undisputed that the Notice to End in this matter does not envelope this incident as the issue. The landlord did not testify they knew of the occurrence. The parties effectively argued over their disagreement regarding smoking on the residential property.

Analysis

I find that the landlord's 10 day Notices to End in this matter were resolved pursuant to Section 46(4) of the Act. As a result, the landlord's 10 Day Notice to End for unpaid rent dated in July and August 2017 are cancelled and of no effect. Effectively I dismiss the landlord's application for an Order of Possession based on these 10 Day Notices to End for Unpaid Rent.

In this type of application respecting the 1 Month Notice to End for Cause, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for 1) the stated reason and, 2) *sufficient* cause. In the absence of contrasting testimony and in the absence of a written agreement respecting the conduct of smoking by the tenants, I find that even if I were accept the tenant's acknowledged single incident of smoking in the rental unit it does not establish *significant cause*. But moreover, in the absence of the aforementioned lack of agreement respecting smoking I find that the landlord has not met their burden in this matter. I find that the landlord has not provided *sufficient*, nor conclusive evidence that the Notice to End was for breaching a term, or material term of the agreement, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End.

Therefore, **I Order** the Notice to End dated July 03, 2017 is cancelled or set aside, with the effect that the landlord's application is dismissed in its entirety. If necessary, the landlord is at liberty to issue new Notices to End pursuant to the Act.

Conclusion

The tenant's application is granted. The landlord's application is dismissed. The tenancy continues. The balance of the tenant's claims is dismissed with leave to reapply.

This Decision is final and binding.

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: September 19, 2017

Residential Tenancy Branch