



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDC, MNSD, OLC, PSF, OPR, MNR, FF

Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") dated August 1, 2017 and other remedies. The landlord requested an Order of Possession based on the 10 Day Notice issued on August 1, 2017. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant indicated she was seeking numerous remedies on her Application. Since the tenant confirmed she is still in possession of the rental unit and wished to continue her tenancy at this time, it was agreed that the most critical issue to resolve is the fate of the tenancy. Accordingly, I informed the parties that the primary focus of this hearing was the enforceability of the 10 Day Notice and the other remedies sought by the tenant would be dealt with as time permitted. The remainder of the hearing time was spent determining the fate of the tenancy and I did not address the other remedies sought by the tenant and they are dismissed with leave.

During the hearing I heard that the rent for August 2017 was not received by the landlord until later in August 2017, more than five days after the 10 Day Notice was served. However, the landlord did not issue receipts for the payment of the outstanding rent until or the rent payments made in September 2017 or October 2017 until recently. It then came to my attention that the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on October 3, 2017. I informed the parties that I was satisfied the tenancy had been reinstated and the 10 Day Notice was no longer of any force or effect considering: the outstanding rent for August 2017 was accepted after the effective date of the 10 Day Notice; a receipt was not issued "for use and occupancy only" upon receipt of the payment and subsequent month's rent payments until well after the payments were accepted; and, the landlord issued another Notice to End Tenancy to the tenant a number of months after the 10 Day Notice for other reasons. The tenant stated that she had not yet filed to dispute the 1 Month Notice, although it was her intention to do so. I informed the tenant that a tenant has only 10 days to file to dispute a 1

Month Notice, although an Arbitrator may grant an extension in “exceptional circumstances”. The tenant and/or her support persons had contacted an Information Officer with the Residential Tenancy Branch after receiving a 1 Month Notice but appeared to misunderstand the information provided since the appropriate action would have been to file an Amendment to this Application. The tenant did not file an Amendment to this Application to dispute the 1 Month Notice or submit a copy of the 1 Month Notice to otherwise indicate she was seeking cancellation of the 1 Month Notice as part of this proceeding. I informed the parties that it is possible to orally request an Application be amended during a hearing and the request for amendment may be granted so long as it is not prejudicial to the other party. The landlord pointed out the landlord had not been put on notice that the 1 Month Notice was under dispute and was not prepared to deal with the 1 Month Notice as part of this hearing. Both the landlord and the tenant indicated they were not satisfied with this tenancy relationship and I suggested the parties consider reaching a mutual agreement to end tenancy as a remedy. The parties indicated they were open to such a solution and I was able to facilitate a mutual agreement between the parties during the hearing. I have recorded the terms agreed upon by the parties by way of this decision and the order that accompanies it.

The Application were amended to include the name of the landlord as it is indicated on the 10 Day Notice and the entity to whom rent payments are made.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties mutually agreed upon the following terms during the hearing:

1. The tenancy shall continue until 12:00 p.m. (noon) on December 31, 2017 at which time the tenant shall return vacant possession of the rental unit to the landlord in a reasonably clean and undamaged condition.
2. Also by 12:00 p.m. (noon) on December 31, 2017 the tenant will ensure the locks to the rental unit are re-keyed, at her expense, so that the master key works for her unit.
3. The tenant remains obligated to ensure her monthly rent obligation of \$880.00 is paid in full and on time for the months of November 2017 and December 2017.
4. The security deposit shall remain in trust for the tenant to be administered in accordance with the Act at the end of the tenancy.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement reached in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the terms an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 12:00 p.m. (noon) on December 31, 2017 to serve and enforce upon the tenant.

It should be noted as a matter of record that the landlord indicated that the landlord charged the tenant \$30.00 for late payment of rent and that the tenant may still owe late fees to the landlord. The landlord was informed that such a fee violates the Residential Tenancy Regulation even if such a term is included in the tenancy agreement and a landlord may not charge a tenant a fee that conflicts with the Act or Regulations. I instructed the landlord that such fees should be stuck from the tenant's ledger account.

Conclusion

The parties reached a mutual agreement during the hearing that I have recorded by way of this decision and the Order of Possession provided to the landlord. The Order of Possession is effective at 12:00 p.m. (noon) on December 31, 2017.

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: October 26, 2017

Residential Tenancy Branch