



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, ERP, RP, MNDC, OPR, OPN, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent; an extension of time to make the application; orders for the landlords to make repairs and emergency repairs; and, monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlords filed for an Order of Possession for unpaid rent and tenant's notice to end tenancy; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. 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

After the tenant filed her Application for Dispute Resolution the residential property was sold. The tenant had named the landlords as the owners at the time she filed her Application for Dispute Resolution. The landlords filed their Application for Dispute Resolution after the property sold. The landlords named one former owner and one current owner as being the landlords. In this decision, I distinguish the landlords as being former landlord(s) and current landlord(s) as appropriate in the circumstance.

I confirmed service of hearing documents upon each other and the Residential Tenancy Branch. The only documentation before me was a copy of the Application for Dispute Resolution filed by the parties, including the written details of dispute, and a contract for carpet installation.

The parties confirmed that the tenant continues to occupy the rental unit and the tenant has not paid rent for several months. Accordingly, the primary focus of this hearing was the status of the tenancy.

I noted that neither party had provided me with a copy of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") even though the tenant asked that I cancel a 10 Day Notice and the landlords requested that I uphold a 10 Day Notice. I asked whether any one of the four landlords in attendance at the hearing had a copy of the 10 Day Notice in front of them. None of the landlords had a copy in front of them. Then I asked the tenant if she had a copy of the 10 Day Notice in front of her and she confirmed that she did. I asked the tenant to orally read the content of the 10 Day Notice, which she did. In making this decision I have relied upon the tenant's oral description of the 10 Day Notice as this was the best evidence of the content of 10 Day Notice presented to me.

In filing her Application for Dispute Resolution the tenant indicated she was seeking an extension of time to dispute the 10 Day Notice. During the hearing, the former landlords were uncertain as to the exact date the 10 Day Notice was served but eventually the male landlord stated he posted the 10 Day Notice on the door of the rental unit on or about August 20, 2017. The tenant stated that should found the 10 Day Notice on her door when she returned from being out of town on August 21, 2017. I was satisfied the tenant filed to dispute the 10 Day Notice within the time limit for doing so and the tenant did not require an extension. Accordingly, I did not consider her request for an extension further.

As for the tenant's monetary claim, the tenant stated that the amount claimed is a sum of the value of possessions that were thrown away by the landlord or damaged by water and mould. The tenant did not indicate how she arrived at the amount in her details or dispute or provide a detailed monetary calculation as is required under section 59 of the Act and the Rules of Procedure. It would also appear from the landlords' details of dispute that they did not understand the basis for the tenant's monetary claim. Therefore, I found the tenant did not sufficiently set out her monetary claim and I dismissed it with leave to reapply.

As for the tenant's requests for orders for repairs, I have not issued any orders with this decision. During the hearing, the tenant acknowledged that she has not paid rent for several months and that she does not have the outstanding rent to pay. Since the landlords are going to be issuing a 10 Day Notice to the tenant in the very near future and the tenant does not have the ability to pay the outstanding rent, and she did not present a legal basis for withholding rent, I found it very likely the tenancy is going to end in the very near future due to unpaid rent and before any repairs may be completed, if repairs are even necessary. However, in the event the tenant is able to

satisfy the outstanding rent and nullify a 10 Day Notice she may be served in the very near future, I give the tenant leave to reapply for repair orders.

The landlords indicated they were seeking an Order of Possession due to a tenant's notice to end tenancy. The landlords did not provide a copy of a written notice to end tenancy given by the tenant. Rather, the landlords described giving the tenant an oral notice to end tenancy. As provided under section 44 of the Act, a tenancy may not be ended by way of an oral notice by either party. Therefore, I did not give further consideration to providing the landlords an Order of Possession based on an oral notice from the tenant or the landlords.

Issue(s) to be Decided

1. Should the 10 Day Notice served by the former landlords in August 2017 be upheld or cancelled?
2. Are the landlords entitled to a Monetary Order for unpaid rent?
3. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The landlords were uncertain as to when the tenancy started; however, the tenant submitted that it started in July 2013. Both parties provided consistent testimony that the tenancy is on a month to month basis; the tenant paid a security deposit of \$350.00; and, rent was set at \$700.00 per month payable on the first day of every month.

It was undisputed that the tenant did not pay rent to the former landlords for the month of August 2017. On or about August 20, 2017 the landlord posted the subject 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit, which the tenant received on August 21, 2017. The 10 Day Notice indicates the tenant failed to pay rent of \$700.00 that was due on August 1, 2017; however, the 10 Day Notice did not include the landlord's name in the space provided or an effective date and the second page of the 10 Day Notice was not served. The tenant did not pay the outstanding rent but filed to dispute the 10 Day Notice.

The property was sold to the current landlords effective September 1, 2017. It was undisputed that the tenant did not pay rent for the months of September 2017, October 2017 or November 2017 to the current landlords.

The tenant stated she had the rent for August 2017 but the former landlords did not take it because they wanted her to move out to sell the property. The tenant stated the current landlords did not come to collect rent from her. The current landlord stated that he provided the tenant with a telephone number but acknowledged that the current landlords did not provide the tenant with a written service address until filing the Landlord's Application for Dispute Resolution.

The tenant was of the position that she should not have to pay rent because there are outstanding repair issues and mould in the rental unit. The landlords attempted to dispute this submission but I did not permit any further submissions on this matter as it is irrelevant to the tenant's obligation to pay rent as explained further in the analysis section of this decision.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent under the Act. The Act provides very limited and specific circumstances where a tenant may legally withhold rent; such as: overpayment of rent or a security deposit; a tenant has paid for emergency repairs to the property and met other criteria under section 33 of the Act; or, the tenant has obtained authorization from the landlord or an Arbitrator to make deductions from rent. The tenant did not present any evidence to suggest any of the above circumstances applied and that she has or had a legal right to withhold rent.

Where a tenant has outstanding repair issues or has damages or loss, the tenant is not automatically entitled to withhold rent. Rather, the tenant must first seek the proper authorization from an Arbitrator to make deductions from rent if the landlord does not authorize deductions. A tenant does not have the right to withhold rent and then seek authorization retroactively. As the tenant was informed during the hearing, withholding rent without the legal right or authorization will result in eviction even if the tenant suffered monetary damages or losses as a result of the landlord's failure to comply with the Act, regulations or tenancy agreement.

Where a tenant does not pay rent that is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Upon receipt of a 10 Day Notice, the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or file an Application for Dispute Resolution to dispute it. In order for the landlord to succeed in bringing the tenancy to an end; however, the landlord must serve a valid and

enforceable Notice upon the tenant. Section 52 of the Act provides that the landlord must use a notice that is in the approved form and the content that must be contained in the Notice to End Tenancy.

The approved form for ending a tenancy for unpaid rent is two pages. Both pages must be served upon the tenant. Further, the form must be sufficiently completed, including an effective date, among other things.

Based on the description of the 10 Day Notice as presented to me during the hearing, I find I am unsatisfied that the former landlords had served the tenant with both pages of a 10 Day Notice and that they had duly completed the 10 Day Notice by providing an effective date. Accordingly, I find the 10 Day Notice served in August 2017 is invalid and unenforceable. Therefore, I grant the tenant's request that I cancel the 10 Day Notice and I deny the landlords' request that I uphold it.

As the parties were informed during the hearing, the current landlords remain at liberty to issue another 10 Day Notice to the tenant for the rent she has failed to pay to them for the months of September 2017, October 2017 and November 2017.

Since the parties provided undisputed evidence that the tenant has not paid rent for August 2017 to the former owners I provide the former landlords with a Monetary Order in the amount of \$700.00 to serve and enforce upon the tenant. I also provide the current landlord with a Monetary Order for the amount of \$2,100.00 which represents the rent the tenant has not paid for the months of September 2017 through November 2017.

The tenant's security deposit shall remain in trust for the tenant at this time since the tenancy is still in effect and I have provided the landlords with Monetary Orders for the unpaid rent. The security deposit is to be dealt with after the tenancy ends in accordance with section 38 of the Act.

I order each party to bear the cost of making their application and I make no award for recovery of filing fees or costs since each party had partial success in their respective applications.

Conclusion

The 10 Day Notice served upon the tenant in August 2017 was not valid or enforceable. Accordingly, I grant the tenant's request that I cancel it and I deny the landlords' request that I uphold it.

The current landlords remain at liberty to issue the tenant another 10 Day Notice to End Tenancy for Unpaid Rent for the rent that has not been paid to them for the months of September 2017 through November 2017.

In recognition the tenant has not paid rent and did not have the legal right to withhold rent from the former landlords and the current landlords, I provide the former landlord with a Monetary Order in the amount of \$700.00 and I provide the current landlords with a Monetary Order in the sum of \$2,100.00.

The security deposit remains in trust for the tenant at this time and is to be dealt with after the tenancy ends in accordance with section 38 of the Act.

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: November 15, 2017

Residential Tenancy Branch