



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC (Tenant's Application)
 OPC, FF (Landlords' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on September 8, 2017 and by the Landlords on September 22, 2017.

The Tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated August 23, 2017 and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant amended his Application on November 21, 2017 to increase his monetary claim. The Landlords applied for an Order of Possession to end the tenancy and to recover the filing fee from the Tenant.

The parties appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings.

Preliminary Issues and Findings

A significant amount of time was spent at the onset of this hearing dealing with the service of documents. The Landlords confirmed receipt of the Tenant's Application and the Tenant's amended Application. The Landlords also confirmed receipt of the Tenant's 44 pages of evidence and 58 pages of evidence which I determined had been served to the Landlord within the time limits provided for by the Residential Tenancy Branch Rules of Procedure (the "Rules").

The Tenant then explained that he served an additional 15 pages of evidence on December 1, 2017 to both the Residential Tenancy Branch and to the Landlords by posting it to their door. The Landlords denied receipt of this evidence as they had not been at their place of residence since the end of November 2017. The Tenant was also informed that he had not served this to the RTB and to the Landlords pursuant to the time limits imposed by the Rules. Therefore, I declined to consider the Tenant's additional 14 pages of exhibit evidence. I find that to do so would have been prejudicial to the Landlords as they had not been served with that evidence at the time of this hearing.

The Tenant confirmed receipt of the Landlord's Application and the Landlord's 57 pages of evidence.

Rule 2.3 sets out that claims made in an Application must be related to each other and that Arbitrators may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply.

I noted that the 1 Month Notice in this case was served to the Tenant because the Tenant is alleged to have: repeatedly paid rent late; sublet the rental unit without the Landlords' consent; and significantly interfered with or unreasonably disturbed another occupant and the Landlords.

The Tenant's monetary claim and amended monetary claim included a request for compensation for alleged harassment and interference by the Landlords and another occupant.

Accordingly, I identified that the issue of the 1 Month Notice was the most pressing matter in this hearing and that matter would be decided first. I informed the Tenant that because the monetary claim he had filed was not sufficiently related to the Landlords' 1 Month Notice, that this matter would be severed and that the Tenant would be given leave to re-apply for his monetary claim.

I started the hearing by asking the Landlords to present the reasons on the 1 Month Notice regarding alleged repeatedly late payment of rent and the issue of the alleged subletting because these matters appeared to be items that could be dealt with quickly.

However, despite allowing the parties more time than what had been scheduled for this hearing, I was unable to hear all of the evidence pertaining to all the on the 1 Month Notice within a 120 minute hearing. The Landlords expressed their frustration in having to wait for a delay due to an adjournment of the proceeding. The Landlords were informed that due process must be followed in giving both parties opportunity to present evidence, especially as the Landlords had submitted lengthy evidence which was in turn being rebutted by the Tenant's lengthy response.

The Landlords then asked that in an effort to get the issues resolved that I only make findings on the issue of the tenancy ending for repeatedly late payment of rent and for the reason of subletting. The Landlords withdrew the 1 Month Notice for significant interference and will deal with this matter separately through a separate notice to end tenancy and/or through an early end of tenancy application. The Tenant was informed of this and no objections were raised to this course of action. The Tenant is at liberty to file an application to cancel any subsequent notice to end tenancy served to him.

Issue(s) to be Decided

- Is there sufficient evidence to prove the two reasons on the 1 Month Notice or should it be cancelled?
- Are the Landlords entitled to an Order of Possession?

Background and Evidence

The parties agreed that this fixed term tenancy of one year started in April 2017. A written tenancy agreement was signed by the parties and rent in the amount of \$1,200.00 is payable by the Tenant on the first day of each month. Under an addendum to the tenancy agreement, the Tenant is also required to pay 50% of the utilities for the basement suite of the residential home. The Tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00 which the Landlords still hold in trust.

The Landlords testified that the Tenant was personally served with the 1 Month Notice on August 31, 2017. The Tenant confirmed receipt of the 1 Month Notice on the same day but stated that it was posted to his door.

In relation to the two reasons dealt with in this hearing for ending the tenancy, the Landlords testified that the Tenant had paid his security deposit and pet damage deposits well after the tenancy had started. The Landlords were informed that late payment of a deposit cannot be considered as late payment of rent and that the Act provides for remedies effective at the time a deposit is not paid.

The female Landlord then testified that from the onset of this tenancy, the Tenant has paid his utilities late for each period. The female Landlord testified that for the period of April to June 2017, the Tenant was provided with a bill for payment by June 27, 2017. However, the Tenant did not pay these utilities until he provided the Landlords with a cheque dated August 1, 2017. The female Landlord testified that the cheque could not be honored by the bank because the Tenant had used whiteout. The tenant then in turn provided a money order for the payment which was made on August 20, 2017.

The female Landlord testified that for the June and July 2017 utilities, the Tenant made the payment on August 15, 2017 but requested that the cheque provided not be cashed until August 23, 2017.

The Landlord testified that for September 2017 utilities, the Tenant made payment on October 27, 2017 and that payment for November 2017 utilities was not paid until the end of that month.

The Tenant explained that for the April to June 2017 utilities he did have sufficient funds and when he gave the Landlords a cheque for that period he was informed by a representative of his bank that the Landlord's bank could have called the Tenant's bank to verify that the cheque was valid. The Tenant acknowledged that he did give the Landlords a money order for payment on August 20, 2017.

The Tenant stated that he got the bill for June and July 2017 utilities on July 14, 2017 and made payment on August 23, 2017. The Tenant testified that he got the September 2017 bill on

September 29, 2017 and made payment to the Landlord on October 27, 2017. The Tenant stated that he paid November 2017 utilities on November 21, 2017.

The Tenant submitted that he had been provided the bills by email, which he does not check on a regular basis and that pursuant to the Act, the Landlord must give him a signed demand letter which they did not give him.

The Landlords referenced email requests made to the Tenant for utility payments but confirmed that the Tenant had not responded to them.

With respect to the allegation that the Tenant had sublet the rental unit, the Landlords state that they had seen an advertisement placed by the Tenant for a roommate without any request or authorisation. The female Landlord expressed concern as the Tenant had placed a sign on the front door asking for the front door to be locked which suggested a sublet situation. However, the Landlords explained that this is not much of an issue now as the roommate has now moved out.

The Tenant rebutted stating that he is allowed to have roommates as they are not covered under the jurisdiction of the Act and that he had informed the Landlord prior to entering the tenancy that he may have roommates. The Tenant testified that while he did place the advertisement for a roommate, the situation did not work out as he could not find anyone suitable.

The Tenant explained that the person the Landlords were referring to was a guest of his who sometimes failed to lock the door which is the reason why he had placed a sign on the front door of the house as a reminder to lock it when he left. The Tenant confirmed that his guest has now left.

The Tenant confirmed that he has not moved out of the rental unit in order to allow for a sublet and is not collecting any rent from anyone under a separate tenancy agreement.

Analysis

In examining the 1 Month Notice, I find it was issued to the Tenant in the correct form and contained the required contents as required by the Section 52 of the Act. I also accept that the Tenant received the Notice on August 31, 2017 and disputed it within the ten day time limit afforded under Section 47(4) of the Act.

When a landlord issues a tenant with a 1 Month Notice, the landlord bears the burden to prove, on the balance of probabilities, the reasons for wanting to end the tenancy. In this case, I must examine whether the Landlords have met that burden of proof.

With respect to the Landlord's reason for ending the tenancy for repeatedly late payment of rent I make the following findings. In this case, the addendum to the signed tenancy agreement does

not stipulate an exact date the utilities are to be paid by. The agreement between the parties appears to be that the Landlord will provide to the Tenant a copy of the utility bill and the Tenant is to pay half of it as the Tenant has been doing. However, it is silent on a set date when utilities are owed and there is nothing in writing to suggest that it is to be paid by the due date on the utility bill as this would be dependent on when the Tenant was issued with the bill.

The Tenant asserted that he had been issued with the bill but did not regularly read his email to look at the demand emails the Landlords had sent him. In addition, the Tenant relies on the Act in giving him 30 days to pay the utility bills but submitted that he never received any formal demand letters from the Landlords.

Section 46 of the Act states that if a tenancy agreement requires that a tenant pay utility charges to a landlord and the charges remain unpaid 30 days after the tenant is given a written demand for payment of them, then the landlord may treat the unpaid utility charges as unpaid rent and may give a notice to end tenancy for unpaid rent.

In this case, I note that the Landlords did not give the Tenant any notice to end tenancy for unpaid rent following the Tenant's failure to pay the utilities when they were requested. Therefore, I find the utility charges cannot be considered as unpaid rent. As a result, I dismiss the reasons of repeatedly late payment of rent on the 1 Month Notice.

The parties are cautioned that if unpaid utility charges are not paid, the Landlords must serve the Tenant, using one of the methods permitted by the Act, with a 30 day written demand letter requiring payment of the utility charges. If these remain unpaid after that period, the Landlords may serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. If The Tenant makes payment within the statutory five day time limit, this will render that notice of no use or effect, but maybe considered by the Landlords as a late payment of rent. Accordingly, a repeated course of such action will give remedy to the Landlords through service of a 1 Month Notice.

With respect to the Landlords' claim that the Tenant had sublet the rental unit without their written authorisation, I find the Landlords have failed to establish that the Tenant has sublet the rental unit as contemplated by the Act and as explained in Policy Guideline 19 on Assignment and Sublet which I have considered.

I find the Landlords failed to satisfy me that the Tenant had vacated the rental unit and was subletting the rental unit under a separate tenancy agreement that is contemplated as a sublet by the Act. Therefore, I must also dismiss this reason on the Landlords' 1 Month Notice.

As the Landlords have not been successful in upholding the 1 Month Notice, I deny the Landlords' request to recover the filing fee from the Tenant.

It should be noted that when a tenant files an application to dispute a notice to end tenancy, if the tenant's application is dismissed, the Landlord must be issued with an Order of Possession

under the Act. Therefore, there was no requirement in any case for the Landlords to file their Application unless they were seeking to deal with issues other than a request for an Order of Possession.

Conclusion

The Landlords have failed to prove the 1 Month Notice dated August 23, 2017. Therefore the Tenant's Application to cancel the 1 Month Notice is granted and the tenancy will continue until such time it is ended pursuant to the Act.

The Tenant's monetary claim was not heard in this hearing and is dismissed with leave to re-apply. The Landlords' Application is dismissed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 07, 2017

Residential Tenancy Branch