



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Disputes Codes: ET CNR

Introduction

The Application for Dispute Resolution landlord seeks an order for the early termination of the tenancy agreement.

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel a 10 day Notice to End Tenancy dated December 4, 2017.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on December 5, 2017. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the Tenant by posting on December 9, 2017. I find that the Application for Dispute Resolution filed by the Tenant was served on the landlord on by posting on December 7, 2017.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for the early termination of the tenancy and an Order for Possession?
- b. Whether the Tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated December 4, 2017?

Background and Evidence:

This is an unusual situation. The tenant rents a barn from the landlord and lives in his trailer in the barn. The barn is about 6000 square feet in size. The tenant repairs cars in the barn although he has become disabled and is presently limited with what work he can do. The tenant has lived under this situation for approximately 7 years. The present landlord purchased the property about 4 to 5 years ago. The tenant testified he paid the previous landlord a security deposit of \$300.

Much of the evidence given by the parties is in dispute. There is no written tenancy agreement between the parties. The landlord testified the rent was \$950 per month payable in advance. The tenant testified the rent is \$600 per month. The landlord testified the tenant failed to pay the rent for the months of October 2017, November 2017, December 2017 and January 2018. The tenant acknowledges he owes \$200 in rent for November 2017, \$600 in rent for December 2017 and \$600 in rent for January 2018. However, he testified he has attempted to pay the rent but the landlord and/or his wife refuses to accept his attempt to pay the rent. Further the landlord refuses to give receipts. The landlord disputes this.

The landlord testified the Municipality prohibits the tenant from living in the barn. He also testified the tenant is using the barn for the business of selling cars stolen from other jurisdictions. The tenant denies he is involved in an illegal activity saying he has never been charged with a crime and has allowed the RCMP to carry out searches.

Preliminary Matter:

There is an issue as to whether the Residential Tenancy Act applies and whether an arbitrator has jurisdiction. Section 2(1) of the Act defines where the Act applies to:

What this Act applies to

- 2** (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

The definition section of the Act defines “tenancy agreement” and “rental unit.”

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"rental unit" means living accommodation rented or intended to be rented to a tenant;

After carefully considering all of the evidence I determined the Residential Tenancy Act applies for the following reasons:

- The tenant rented the accommodation with the trailer inside for over 7 years and was the intention of the parties he could use this as his living area.
- The tenant paid a security deposit.
- The parties have conducted themselves as if this is a residential tenancy relationship..

Landlord's Application for an Early End to the Tenancy:

Section 56(1) provides as follows

"Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord failed to present sufficient evidence to establish that an early end to the tenancy is justified. The landlord alleged the tenant was involved in a car theft illegal activity. The tenant denies this. The landlord failed to present sufficient evidence to establish this allegation. Further, the landlord failed to present sufficient evidence to establish that the tenant misconduct to the landlord by blocking their way and use of abusive language is sufficient misconduct to justify an early end to the tenancy. As a result I dismissed the landlord's application.

Tenant's Application to Cancel the 10 day Notice to End Tenancy:

The 10 day Notice to End Tenancy dated December 4, 2017 alleges the Tenant failed to pay the rent that was due on October 1, 2017. However, the Notice to End Tenancy does not identify how much rent is owed. I determined the failure to identify the amount of rent owed as of October 1, 2017 is fatal to the validity of the Notice to End Tenancy.

The Act provides that the Notice is void if the Tenant pays the arrears within 5 days of service. The failure to identify the amount the Tenant owes has effectively denied the tenant of the opportunity to pay the arrears and void the Notice.

Further, the landlord testified he gave the tenant receipts when he paid the rent. However, the landlord failed to include copies of these receipts with the evidence presented at the hearing. The landlord also failed to provide documentary evidence to support his testimony the rent was \$900 per month.

Finally, the tenant testified he attempted to pay the arrears of rent for November to the landlord's wife but she refused to accept the payment and refused to provide a receipt. The landlord's wife was not present at the hearing and failed to provide evidence to contradict this testimony.

In summary I ordered that the 10 day Notice to End Tenancy dated December 4, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. This decision is based on the inadequacy of the Notice to End Tenancy. I have not made a determination as to amount of the agreed rent, whether the tenant has sufficiently attempted to pay the rent or whether there are any grounds for not paying the rent.

The landlord has liberty to serve a new 10 day Notice to End Tenancy which clearly states the amount of rent that is owed to the date of the Notice and to follow the proper procedures under the Residential Tenancy Act to end a tenancy for non-payment of rent.

This decision is final and binding on the parties.

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: January 03, 2018

Residential Tenancy Branch