



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC, LRE, LAT,

Introduction

On December 4, 2017, the Tenants submitted an Application for Dispute Resolution requesting the following:

- to cancel a 1 Month Notice to End Tenancy for Cause dated November 23, 2017.
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated December 2, 2017.
- for a monetary order for compensation for damage or loss under the Act, Regulation, or tenancy agreement.
- to set conditions on the Landlord's right to enter the rental unit.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties testified that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is there Cause to end the tenancy based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
- Is there cause to end the tenancy based on the 1 Month Notice?
- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to restrict the Landlords right to enter the rental unit?

Background and Evidence

The parties testified that the tenancy started on September 1, 2017, as a 11 month fixed term tenancy. Rent in the amount of \$1,700.00 per month is to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$850.00 to the Landlord.

The Landlord testified that he issued the Tenant the following notices to end tenancy:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2017.
- 1 Month Notice To End Tenancy For Cause dated November 23, 2017.

The Tenant disputed both Notices by applying for Dispute Resolution on December 4, 2017.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$1,700.00 which was due on December 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice. The Landlord testified that the Tenant has not paid any rent towards December 2017, rent. In addition, the Landlord testified that the Tenant has not paid the rent owing for January 2018.

The 1 Month Notice states that the Rental unit /site must be vacated to comply with a Government order. The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Landlords testified that they purchased the rental property on July 1, 2017, and it contained four rental suites. They submitted that they received a letter from the city informing them that the rental property is not zoned for a four-plex, and ordering them to convert the property back to a duplex. The Landlords provided a copy of the letter from the city. The Landlords issued the 1 Month Notice To End Tenancy For Cause, based on the letter they received from the City.

In reply, the Tenant testified that he has not paid the rent for December 2017, because he feels that the Landlord should have issued him a 2 Month Notice To End Tenancy For Landlord's Use Of Property, due to renovations and he should be provided one month's free rent.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant failed to pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord never issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property and the Tenant does not have a legal entitlement to a free month's rent. I find that the Tenant had no legal basis to withhold payment of the rent.

I dismiss the Tenant's application to cancel the 10 Day Notice dated December 2, 2017.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Since the tenancy has ended based on the 10 Day Notice to End Tenancy for Unpaid Rent, there is no need to further consider whether the tenancy ends based on the 1 Month Notice To End Tenancy For Cause dated November 23, 2017.

Since the tenancy has ended due to the Tenant's failure to pay the rent due under the tenancy agreement, the Tenants claim for compensation for moving costs and for an

order to set conditions on the Landlords right of entry are dismissed without leave to reapply.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and had no legal basis to withhold payment of rent.

The Landlord is granted an order of possession effective 2 days after service on the Tenant.

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 09, 2018

Residential Tenancy Branch