



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, CNC, OLC, FFT, FFL, OPR, OPC, MNDL

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were to be heard together; however the tenants failed to serve the landlord with a copy of their application for dispute resolution and notice of hearing, and therefore the tenant's application will be dismissed.

I therefore proceeded with a hearing on the landlord's application only.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy that was given for nonpayment of rent, and also based on an Order of Possession that was given for cause. The landlord is also requesting a monetary order for \$35,000.00 in damages, and is also asking for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the landlord has put on this application.

Section 2.4 of the rules of procedure states:

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case it is my finding that not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with request for an Order of Possession and recovery of the filing fee, and I dismiss the remaining monetary claims for damages, with liberty to re-apply.

Background and Evidence

The parties agree that this tenancy began on July 1, 2016 and that the monthly rent is \$1762.90 due on the first of each month, and that as of today's date there is no rent outstanding.

The landlord testified that the tenant failed to pay the October 2017 rent and therefore, on October 5, 2017, a 10 day Notice to End Tenancy was posted on the tenant's door.

The landlord further testified that the tenant did not pay that October 2017 rent until October 16, 2017, at which time a receipt was issued for use and occupancy only.

The landlord further testified that every subsequent receipt has also been issued for use and occupancy only.

The landlord further testified that the rent has been paid late for the last six months and therefore the tenant was also served with a one-month Notice to End Tenancy for repeated late rent payments, and that notice was served by posting it on the tenant's door on October 25, 2017.

The landlord is therefore requesting an Order of Possession based on both of these notices to end tenancy, and requests recovery of his \$100.00 filing fee.

The tenant testified that she did fail to pay the October 2017 rent when it was due, and did receive the ten-day Notice to End Tenancy, which the landlord had posted on her door.

The tenant further testified that she subsequently paid that October 2017 rent on October 16, 2017, and was issued a receipt from the landlord which did state “for use and occupancy only.”

The tenant further testified that she has continued paying her rent and that her rent is now up to date and there is no rent outstanding.

The tenant further testified that she has paid her rent late on numerous occasions however it was due to the fact that she did not receive her check from her employer in time to pay the rent on the first of each month. She paid the rent to the landlord as soon as she received payment from her employer.

Analysis

Section 46 of the Residential Tenancy Act states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In this case, the tenant failed to pay the rent that was due on October 1, 2017 and subsequently received a 10 day Notice to End Tenancy pursuant to section 46 of the act and I have reviewed that Notice to End Tenancy and it does comply with section 52.

The tenant subsequently failed to pay that outstanding rent within the five day grace period, and therefore the tenant is conclusively presumed to have accepted that the tenancy ends.

The landlord has subsequently accepted rent from the tenant; however that rent has only been accepted for use and occupancy, and therefore has not reinstated the tenancy.

Therefore the landlord does have the right to an Order of Possession based on the 10-day Notice to End Tenancy that was issued on October 5, 2017.

Further, section 47(1)(b) of the Residential Tenancy Act states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

In this case the tenant has admitted that she has not paid the rent on time on numerous occasions and therefore it is my finding that the landlord did have the right to end this tenancy under section 47, by giving the proper one month Notice to End Tenancy. I have reviewed the notice given by the landlord and it is my finding that it is in the correct form.

Therefore, the landlord also has the right to an Order of Possession based on the one-month Notice to End Tenancy.

It is my decision therefore that I will allow the landlords request for an Order of Possession based on both section 46 and 47 of the Residential Tenancy Act, and since rent has been paid for use and occupancy to the end of January 2018, I will issue an

Order of Possession pursuant to section 55 of the Residential Tenancy Act for 1:00 p.m. on January 31, 2018

I also allow the landlords request for recovery of the \$100.00 filing fee pursuant to section 72 of the Residential Tenancy Act.

Conclusion

I have issued an Order of Possession for 1:00 p.m. on January 31, 2018.

I have issued a monetary order for recovery of the \$100.00 filing fee.

As stated above the tenant's application is dismissed in full, without leave to reapply.

Further, as stated above, the landlord's \$35,000.00 monetary claim for damages is dismissed with leave to reapply.

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 16, 2018

Residential Tenancy Branch