



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant was also accompanied by a Housing Support Worker, who did not testify or take part in the hearing, but observed only. The parties were given the opportunity to question each other and make closing submissions.

The tenant testified that he did not receive any evidentiary material from the landlord. The electronic case file system shows that all evidence provided to the Residential Tenancy Branch was provided by the tenant. However, the parties agree that all evidence submitted on January 8, 2018 was submitted by the landlord, not by the tenant. The landlord also testified that the evidentiary material was sent to the tenant by registered mail on January 8, 2018 and orally provided a tracking number. The tenant checked the tracking number on-line during the hearing and agrees that the landlord has sent it but does not know why it wasn't received. I find that the landlord's evidence was provided to the tenant in accordance with the Rules of Procedure, and all evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 15, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is half of a duplex, but the other half is not owned by the landlord and the landlord does not reside on the rental property. A portion of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that rent was paid in advance by a government Ministry, and when the Ministry stopped paying the tenant fell into arrears of rent. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing, by posting it to the door of the rental unit on December 12, 2017. It is dated December 12, 2017 and contains an effective date of vacancy of December 22, 2017 for unpaid rent in the amount of \$1,000.00 that was due on December 1, 2017. The tenant has not paid any rent since and is now in arrears \$2,000.00 for December, 2017 and January, 2018.

Once the government Ministry stopped paying the rent the tenant began complaining about the rental unit and repairs required. The landlord inspected the rental unit with the tenant 2 months ago and no significant issues were noted, only a small leak in the kitchen ceiling. The landlord intends to have the roof replaced when the weather warms up. Other than that, the rental unit is in good shape. No issues were raised by the tenant about sewer gases and no such odor was noticed by the landlord.

The tenant testified that the rental unit is damp, the furnace doesn't work, the roof leaks and plywood is missing, and cold air is coming through the floor. The tenant has been telling the landlord but the landlord says that tenants do the work on houses for free. The landlord offered to give the tenant \$50.00 and a bucket of tar to fix the roof. He wanted the tenant to hitch-hike or take a bus to the nearest community to get the bucket of tar but the tenant refused. The furnace hasn't worked for 2 months, which stopped working during a power outage and the tenant doesn't know how to re-set it, although the landlord was at the rental unit on November 15 or 16, 2017 and the tenant forgot to mention it.

The tenant also testified that he has been draining water out of the shop and some belongings in there of the tenant have been ruined. The landlord doesn't acknowledge any of it because he doesn't care. Problems have been mentioned to the landlord but he doesn't pay any attention to it.

The landlord also threatened to change the locks to the rental unit and take everything the tenant owns.

Some discussion was held regarding the tenant's application, and the tenant didn't know that he ought to have applied for other relief regarding the state of repair of the rental unit. The tenant testified that he didn't know that he had to apply for a repair order or reduction in rent.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. That *Act* also permits me to amend an Application for Dispute Resolution, but I find that an amendment to include an application by the tenant for a reduction in rent or a repair order would not change the outcome of this dispute, because a tenant is required to pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement, or if the landlord fails to make necessary repairs.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. The tenant does not dispute that rent hasn't been paid, and therefore, I dismiss the tenant's application.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 26, 2018

Residential Tenancy Branch