



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC OPR MNR MNDC MNSD FF

Introduction:

Both parties filed applications and attended and gave sworn testimony. The landlord said he served personally on December 24, 2017 the One Month Notice to end Tenancy for cause dated December 23, 2017 to be effective January 31, 2018. He also served the Application for Dispute Resolution personally. The tenant filed their Application to dispute the Notice on February 1, 2018 which is beyond the time allowed under section 47. The landlord agreed he received the tenant's Application. I find that both parties were legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 46 or 47 and 55 for unpaid rent or cause;
- b) A Monetary Order for unpaid rent pursuant to sections 46 and 67;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- e) To be granted an extension of time to file this Application;
- f) To cancel a Notice to End Tenancy for cause; and
- g) To recover the filing fee.

Preliminary Issue: Extension of Time

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. Section 66 of the Act sets out criteria for extending the time limit established by the Act in exceptional circumstances. Section 66(3) provides an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the Notice. I

find the effective date on the Notice to End Tenancy was January 31, 2018 and the tenant filed her Application on February 1, 2018. I find even if there were exceptional circumstances, I do not have jurisdiction (authority) to consider the request.

The Notice to End Tenancy states on its face that a tenant has the right to dispute this Notice **by filing an Application for Dispute Resolution at the Residential Tenancy Branch within 10 days** after receiving this Notice and she did not do it in time..

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy either under section 46 or 47 of the Act and obtain an Order of Possession? Is he entitled to a monetary order for unpaid rent and to recover the filing fee?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2012, a security deposit of \$575 was paid and rent is currently \$1300 plus utilities a month. It is undisputed that the tenant owes \$1300 rent for each of February and March 2018 and was served a ten day Notice on February 3, 2018. The landlord said the tenant's mother had been assisting her with rent payments but this stopped in the late fall.

The tenant said she was confused for the landlord served the One Month Notice to End Tenancy for cause based on extraordinary damage to the property. She said he was sending bills to her mother and her for \$12,000 for repair and this escalated to \$18,000. She said she had no opportunity to do the repairs or address the issue of reasonable wear and tear.

On the unpaid rental issue, she said she contacted a rent subsidy program which was to contact the landlord. The landlord said a representative did call him and ask how much rent was owed. When he told her, the representative said that the subsidy would not be nearly enough to cover that.

He requests an Order of Possession to be effective as soon as possible and a monetary order for \$2600 for rental arrears and over holding rent. He said the tenant also owes for utilities which are likely \$200 to \$250 but he does not have the bill yet. He requests

to retain the security deposit to offset the amount owing. The tenant did not dispute the amount owing.

The landlord undertook to the tenant that he would not enforce the Order of Possession until Monday March 12, 2018 to allow her the time she requested to move out.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not paid the rent and her application does not dispute she owes the rent. I find her tenancy ended on February 13, 2018 pursuant to the 10 Day Notice to End Tenancy. I find pursuant to Sections 46 and 55, the landlord is entitled to an Order of Possession. An Order of Possession is issued effective two days from service but the landlord has undertaken not to enforce this until Monday March 12, 2018.

I find it is unnecessary to consider the One Month Notice to End Tenancy for cause as the landlord has obtained the Order of Possession under section 46 of the Act and the tenant was out of time to dispute the One Month Notice.

I find it is irrelevant to consider the tenant's requests for repair as her tenancy is ended. I find she will have an opportunity to present her contentions regarding illegal entry and lack of services if she disputes the landlord's future damage claim. I dismiss this portion of her application with leave to reapply.

The landlord has a significant damage claim which the tenant disputes; she wishes to argue reasonable wear and tear. Also the tenant is still in possession and a move-out condition inspection report has not been completed. The final bill for utilities has also not been received.

I find the issues in priority in this application are the Notices to End Tenancy and the unpaid rent. Pursuant to the Residential Tenancy Rules of Procedure 2.3, I hereby sever the damages and utilities claim and give the landlord leave to reapply. The parties were advised of the Residential Policy Guideline 40 which assigns useful life of elements in rented premises and is designed to account for reasonable wear and tear.

Monetary Order

I find that there are rental arrears and over holding rent in the amount of \$2600.00 for February and March 2018.

Conclusion:

I dismiss the application of the tenant for the reasons cited above and give her leave to reapply if she disputes the landlord's damage claim. I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I give the landlord leave to reapply for compensation for damages and unpaid utilities.

Calculation of Monetary Award:

Rent arrears and over holding rent Feb. & March 2018	2600.00
Filing fee	100.00
Less security deposit	-575.00
Total Monetary Order to Landlord	2125.00

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: March 06, 2018

Residential Tenancy Branch