



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, CNC, OPL, OPC

Introduction

In the first application, by filing number, the tenant seeks to cancel a one month Notice to End Tenancy in which the landlords allege repeated late payment of rent. He also seeks a compliance order regard the landlords' bothering him and an emergency repair order, apparently regarding a washing machine.

In the second application the landlords seek an order of possession pursuant to the one month Notice or alternatively, pursuant to a two month Notice to End Tenancy given for landlord use of property dated January 29, 2018 and received by the tenant on that day.

It was apparent at the hearing of this matter that the tenant had not disputed the two month Notice within the fourteen day period allowed or at all. Section 49 of the *Residential Tenancy Act* (the "Act") was referred to the parties. The tenant has withheld March rent in reliance on that Notice. As a result, it was apparent that this tenancy would end on the April 1, 2018 effective date of the two month Notice.

Additionally, it was made clear that the tenant's request for a compliance order that might only cover the last two weeks of this tenancy or for a repair order for a washing machine that might not reasonably be carried out within the last two weeks of this tenancy, would not be very practical orders and that the tenant might prefer to seek a remedy in damages. Damages have not been claimed in this application. On that understanding, this matter proceeded on the sole issue of whether or not this tenancy has been ended even earlier than April 1, as the result of the one month Notice.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses

and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant been repeatedly late paying rent?

Background and Evidence

The rental unit is a one bedroom basement suite in a house. It is the only rental suite. The landlords, the owners, live upstairs.

There is a written tenancy agreement. The tenancy started September 15, 2017 on a month to month basis. The monthly rent is \$1000.00. The landlords hold a \$500.00 security deposit.

There is no dispute but that the tenant was a day or two late paying rent in November and December 2017.

The landlords say he was late paying the very first rent on September 15 or 16.

This tenancy started mid-month and there is no dispute but that the tenant was to pay \$500.00 for a half month's September rent. The tenant obtained possession on September 15 and paid \$500.00 on September 16 then another \$500.00 on September 21.

The landlords say the first \$500.00 was for the security deposit and so the second \$500.00 was for rent and it was late.

The tenant says the converse.

Analysis

It seems to me highly unusual that a landlord would grant a tenant possession without securing the rent money, though the payment of deposit money may come later. In the event a landlord does so, then, in my view, the landlord has clearly agreed to accept that first rent other than on the day it was due, namely the day the landlord gives the tenant the keys.

On the evidence before me it has not been proved on a balance of probabilities that the September 16 money was deposit money and not rent money or that it was not late by implied consent. It follows that the landlords have not established that the tenant has been late three times (as per Residential Tenancy Policy Guideline 38, "Repeated Late Payment of Rent").

The landlords' application for an order of possession pursuant to the one month Notice is dismissed.

Conclusion

The landlords' application for an order of possession pursuant to the two month Notice to End Tenancy is allowed. They will have an order of possession effective April 1, 2018.

Neither side claimed for recovery of any filing fee.

This decision was rendered orally at hearing and 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 15, 2018

Residential Tenancy Branch