



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: AS ERP LAT LRE RP
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 1, 2018.

The Landlord was represented at the hearing by his lawyer, N.B. The Landlord also had a property manager attend named, M.H. These parties will be collectively referred to as the "Landlord". The Tenant was also present at the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending due to unpaid rent/utilities and whether or not the Landlord is entitled to a monetary order for the amount identified on the 10-Day Notice. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the

Tenant's application. Further, I will address the following portion of the Landlord's application:

- an order of possession based on a 10-Day Notice for unpaid rent or utilities (10 Day Notice); and,
- a monetary order for unpaid rent or utilities.

During the hearing, the Landlord expressed that there have been multiple different notices to end tenancy issued. The Landlord stated that there were at least two, 10 Day Notices, and also a 1-Month Notice for Cause. During the hearing I made it clear that the only Notice that would be considered was the one I had before me, which was a 10 Day Notice, issued on December 29, 2017. The Landlord was unable to point out where the other 10-Day Notices were in his evidence package, so I made it clear that only the one from December 29, 2017, will be looked at in this review. The rest of the notices issued are not part of my considerations or my findings in this hearing, and the Landlord is granted leave to reapply for consideration of other notices, if necessary.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid utilities?
2. Is the Landlord entitled to a monetary order for unpaid utilities?

Background and Evidence

The Landlord stated that there have been multiple notices issued to the Tenant because he owes money for unpaid rent and utilities. During the hearing, the only 10 Day Notice the Landlord was able to locate and direct me to within his evidence, was one issued on December 29, 2017. Although a significant amount of time during the hearing was devoted to finding the other notices, this was the only one that could be located. As such, the remainder of this decision will focus on the 10 Day Notice from December 29, 2017.

The Landlord stated that this 10 Day Notice was served to the Tenant, in person, on December 29, 2017. The Tenant does not recall the exact date this 10 Day Notice was served but acknowledges getting it. The Landlord stated that this 10 Day Notice was issued because the Tenant had failed to pay his 1/3 of the utilities. The Landlord indicated that the amount outstanding (Fortis/Gas bill) on December 29, 2017, was \$260.39. This 10 Day Notice does not indicate any amount of rent was outstanding, just the above amount for utilities.

The Landlord stated that the Tenant is responsible for paying 1/3 of utilities, and failed to do so in December of 2017. The Landlord stated that on December 20, 2017, the Tenant was given notification that he owed \$260.39, and when the Tenant did not pay this amount, the Landlord issued the 10 Day Notice on December 29, 2017.

On the 10 Day Notice, it indicates that written demand for this amount of utilities was given on December 10, 2017. Although there are copies of some utility bills provided into evidence, the Landlord was not able to point me to where this written demand was in his evidence, and the Tenant does not agree that he was required to pay this amount.

During the hearing, there was significant confusion with respect to where evidence was located within the Landlord's evidence package. The Landlord had significant difficulties pointing me to relevant evidence, as much of the evidence he was relying on was mislabelled, and mixed in with other irrelevant documentation.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I note that the Landlord stated in the hearing that the written demand for utilities (for \$260.39) was given to the Tenant on December 20, 2017. However, on the 10 Day Notice, it said this written demand was given to the Tenant on December 10, 2017. The Landlord's evidence on this point is inconsistent and I was not pointed to any documentary evidence during the hearing showing that the Landlord gave the Tenant an actual written demand to pay the outstanding utility bills, such that I could determine with any accuracy when any written demand may have been given.

Further, I note the following portion of the *Act*:

Landlord's notice: non-payment of rent

46 (6) If (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Landlord may only issue a 10 Day Notice for unpaid utilities as specified above. In this case, I find there is insufficient evidence to clarify when the Landlord provided the Tenant with a written demand of the utilities listed on the 10 Day Notice for \$260.39. There is conflicting evidence on when this written demand was given but in either case, December 10, 2017, vs. December 20, 2017, a full 30 days was not given to allow the Tenant to pay the amount, prior to issuing the 10 Day Notice on December 29, 2017. As such, I find the 10 Day Notice from December 29, 2017, is of no force or effect. The Landlord's application for an order of possession based on this 10 Day Notice is dismissed, without leave to reapply. The Landlord is at liberty to re-apply for an order of possession for any of the other notices he references in the hearing, but could not locate.

Ultimately, I find the Landlord's documentary evidence was very disorganized, and poorly labelled, such that no one at the hearing could actually locate many of the pertinent documents. The Landlord stated that part of the reason this documentary evidence was poorly presented is because the Government Agent assisting the Landlord with their evidence upload mislabelled documents, and mixed up the order of many of them. From my perspective, it is not clear what the actual cause was for the Landlord's poorly organized evidence. However, after considering the totality of the situation, I find the disorganization of evidence was detrimental to the Landlord's claim and I find it appropriate to dismiss the Landlord's request for a monetary order (in the amount of \$260.39 for utilities), with leave to reapply.

I note that there were almost 400 pages of documentary evidence (some of which were illegible) provided by the Landlord, which exacerbated his inability to locate the relevant pieces. I suggest to both parties that on any future applications, all evidence be clear, organized, and easy to locate.

In summary, the Landlord's request for an order of possession based on the 10 Day Notice from December 29, 2017, is dismissed without leave to reapply. However, the Landlord is at liberty to reapply for an order of possession based on any of the other

notices that he has issued, or may issue in the future. Further, the given the evidentiary issues, I dismiss the Landlord's request for monetary compensation for \$260.39 in unpaid utilities. Given that some of the evidentiary issues may be a result of how it was handled at the Government Agent, I grant the Landlord leave to reapply for this amount, and any other amount still outstanding.

I decline to award the filing fee to the Landlord for the cost of this application, as his application was substantially unsuccessful.

Conclusion

The Tenant is granted leave to reapply for all of the issues he applied for on his application, as they were severed to focus on whether or not the tenancy would end as a result of the 10 Day Notice issued December 29, 2017.

The Landlord's request for an order of possession based on the 10 Day Notice issued December 29, 2017, is dismissed without leave to reapply.

The Landlord is granted leave to reapply for a monetary order based on any unpaid rent or utilities.

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 5, 2018

Residential Tenancy Branch