



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, CNC, OLC, OPC, MNR, FF

Introduction

The landlords and the tenants convened this hearing in response to applications.

The tenants' application is seeking orders as follows:

1. To cancel two (2), Two Month Notice to End Tenancy for Landlord Use of Property;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid rent;
3. To cancel a One Month Notice to End Tenancy for Cause;
4. To have the landlord comply with the Act; and
5. To recover the cost of filing the application.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all amendments, evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary issue

The tenants filed to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, said to be issued on December 31, 2017. The tenant did not provide a copy of the notice to end tenancy. The landlords denied they issued this notice.

Although the parties dispute whether there was a notice to end tenancy issued on December 31, 2017, I find it not prejudicial to either party to cancel this notice, since it was the tenants request to have the notice cancelled.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid rent (the "Notice"), issued on February 2, 2018, be cancelled?

Should the One Month Notice to End Tenancy for Cause, issued on January 31, 2017, be cancelled?

Should the Two Month Notice to End Tenancy for Landlord's Use of Property, issued on February 28, 2018, be cancelled?

Background and Evidence

The tenant testified that they received the Notice on February 2, 2018. The tenant stated that rent was not paid in full within 5 days. The tenant stated that rent was \$2,100.00 per month and that they have not pay any rent for February, March and April 2018, because they were waiting for the outcome of today's hearing.

The landlords seek a monetary order for unpaid rent and seek to have the security deposit of \$1,050.00 and pet damage deposit of \$1,050.00 (the "Deposits) offset with the money owed.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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].*

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed they were entitled to withhold rent until the outcome of the hearing.

However, the tenants did not have the authority under the Act to withhold any portion from the rent. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so.

I find the Notice issued on February 2, 2018, is valid. I find the tenancy legally ended on February 13, 2018, which was the effective date in the Notice. Therefore, I dismiss the tenants' application to cancel the Notice. The tenant is now overholding the premise.

Since I have ordered that the tenancy has ended on the basis of unpaid rent. I find it not necessary consider the merits for the One Month Notice to End Tenancy for Cause, issued on January 31, 2018 or the Two Month Notice to End Tenancy for Landlord's Use of Property, issued on February 28, 2018.

The tenants' application is dismissed without leave to reapply.

The tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlords.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since the tenants' application for dispute resolution to dispute a notice to end tenancy has been dismissed. I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the landlords have established a total monetary claim of **\$6,400.00** comprised of unpaid rent for February, March, and April 2018, and the \$100.00 fee paid for this application.

I order that the landlords retain the Deposits **\$2,100.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4,300.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants failed to pay rent. The tenants' application is dismissed.

The landlords are granted an order of possession and a monetary order for unpaid rent.

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: April 05, 2018

Residential Tenancy Branch