



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNC, FF
Landlord: OPR, MNR, FF

Introduction

This hearing was convened in response to cross- applications by the parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied March 02, 2018 to:

1. Cancel a 1 Month Notice to End for Cause - Section 47

The landlord applied April 20, 2018 for:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to recover the filing fee for this application - Section 72

The tenant and 2 of the landlord's representatives attended the hearing and were given full opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. The parties acknowledged exchanging their evidence. The parties were given opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

During the proceeding the landlord testified they were withdrawing the 1 Month Notice to End of this matter. I found this determination by the landlord effectively renders the

Notice dated March 01, 2018 null and of no effect. The hearing proceeded on the merits of solely the landlord's application.

Issue(s) to be Decided

Is the Notice to End tenancy for Unpaid rent valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in 2013. The parties agreed that the landlord of this matter assumed ownership as purchaser of the rental unit in February 2018. The parties further agree that prior to February 2018 the previous owner was the tenant's father. It is undisputed that there is no written contractual arrangement or tenancy agreement. It is further undisputed that a security deposit is being held in trust. The tenant testified that they used to pay their father \$200.00 cash per month for the rental unit. The landlord provided a statement from the previous owner (tenant's father) dated April stating that because the tenant is a family member they did not think that a tenancy agreement, inspection requirements or a security deposit was considered or thought to be necessary or required by law. They go on to state, "*The unit had a rental amount of \$1,100.00 per month*", and, "*No rent has been collected from Marc for Approx. 2.5 to 3 years (2015 approx.)*" – all as written. The previous landlord further stated that the utilities were paid by them. The tenant denied that they were obligated to pay any more than \$200.00 per month. It is undisputed by the attending parties that they have not established agreement in respect to the payable rent; however, the landlord has determined that a fair market representation for the rental unit is \$1600.00 per month.

The landlord testified that on April 04, 2018 they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by sliding it under the tenant's door. The 10 Day Notice to End states the Notice was served personally to the tenant. The tenant denies receiving the Notice by any method. The Notice states that as of April 01, the tenant failed to pay \$1,600.00 for the rent. The landlord seeks unpaid rent and an Order of Possession.

Analysis

On preponderance of the evidence and on balance of probabilities I find as follows.

I find considerable contrast in the evidence respecting the establishment of the tenancy. The evidence indicates lack of agreement, written, oral or implied as to the terms of a tenancy and there is disagreement as to key requirements for a tenancy agreement, most noticeably the requirement or amount of the payable rent in exchange for possession or occupation of the rental unit. The tenant claims \$200.00, the previous landlord claims the unit had a rent of \$1,100.00 per month however it is not clear if this was the amount to which the parties of the day agreed. Alternatively, the current

landlord independently determined the rent should be \$1,600.00 per month and relies on this amount upon which they issued the 10 Day Notice to End.

I find that the evidence in this matter supports that the tenancy under the previous landlord operated as one predicated on a casual understanding rather than a contractual arrangement. I find the arrangement in this matter can aptly be described as a Licence to Occupy. The Residential Tenancy Act **Definitions** state that a tenancy agreement includes a Licence to Occupy. I find that as the previous owner no longer has authority over the rental unit the tenant no longer has the permissions they were previously extended and therefore are currently residing in the unit at the pleasure or inclination of the new owner.

None the less, even if I were to accept that a contractual tenancy exists in this matter and that the tenant was successfully served the 10 Day Notice to End of this matter, I find that the landlord's claimed amount of unpaid rent in the Notice is not supported by agreement or other valid test or evidence as the true payable amount for the rent. As a result, I find that the landlord did not issue a valid Notice to End and therefore the Notice in this matter is effectively **cancelled**, with the further result that the landlord's application is **dismissed** in its entirety.

The landlord's withdrawal of the 1 Month Notice to End renders the tenant successful in their application and they are therefore entitled to recover their filing fee of \$100.00.

Conclusion

The landlord's application is dismissed. The tenant's application is granted.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$100.00**. If the landlord does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: May 16, 2018

Residential Tenancy Branch