



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, ERP, RP, RR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Ten Day Notice to End Tenancy for Unpaid Rent, issued on March 16, 2018 (the “Notice”), to cancel a One Month Notice to End Tenancy for Cause, (the “One Month Notice”) issued on March 13, 2018, for a monetary order for money owed or loss under the Act, to be paid back the cost of emergency repairs and for a rent reduction.

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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notices to End Tenancy. The balance of the tenants’ application is dismissed, with leave to reapply.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notices be cancelled?

Background and Evidence

The tenancy began on May 1, 2017. Rent in the amount of \$475.00 was payable on the first of each month. The tenants paid a security deposit of \$237.50.

The tenant testified that they received the Notice to end tenancy. The tenant stated that they did not pay rent for March 2018, because they had made repairs to the rental unit. The tenant stated that the landlord did not authorize them to make the repairs and did not agree to pay for them.

The landlord testified that the tenants failed to pay rent for March, April, May and June 2018. The landlord stated that they received an e-transfer last night, June 5 2018, for a portion of the rent; however, the tenants forgot to give them a password to be able to accept the money.

The tenant at the hearing provided the landlord with the password. The parties agreed that after the e-transfer is accepted that the balance of rent arrears owed is \$200.00 and June 2018, rent for \$475.00. Total owed is \$675.00.

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 tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice and that they failed to pay rent for April, May, and June 2018.

While the tenants indicated in their application that they completed emergency repairs and paid the same amount of rent for the repair, no evidence was present that in February 2018, an emergency occurred and that they followed the provision of the Act. Nor was there any receipt provided to support that they paid any monies.

At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. Further, the tenants continued to withhold rent. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

At the hearing the parties agreed that if the tenants pay the balance of rent owed in the amount of \$675.00 by June 12, 2018, that the landlord agreed to extend the tenancy to June 30, 2018.

Should the tenants pay the above rent owed on or before June 12, 2018, I find the two day notice has no force or effect.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **June 30, 2018**. This order may be filed in the Supreme Court and enforced as an order of that Court.

Since I have ended the tenancy based on unpaid rent, I find it not necessary to consider the merits of the One Month Notice; however, it is clear by the tenants failure to pay rent that any notice issued under this section of the Act, that the landlord would be successful as three late payments is sufficient to end the tenancy.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is granted two (2) orders of possession as stated above.

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: June 07, 2018

Residential Tenancy Branch