



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, PSF, ERP, RR, CNR, LAT

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid rent and several other remedies including orders for the landlord to provide services or facilities; to make emergency repairs; to allow access to the unit or site; and authorization to reduce rent payable. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain the security deposit.

At the outset of the hearing I explored service of hearing documents and evidence upon each other.

The tenant testified that she gave her hearing documents to the landlord's wife at the landlord's residence. The landlord confirmed that he received the tenant's Application for Dispute Resolution from his wife. Neither party knew when the tenant served her hearing package. The landlord did not raise any issue with respect to the tenant serving his wife or the date she served her package. I deemed the landlord sufficiently served with the tenant's hearing package under section 71 of the Act since he had the tenant's Application for Dispute Resolution before him as to do so is beneficial to both parties. It is beneficial to both parties because the tenant's request to cancel the 10 Day Notice would be heard and if the tenant is unsuccessful in establishing a basis to cancel the 10 Day Notice the landlord would be provided an Order of Possession.

As for service of the landlord's Application for Dispute Resolution and evidence, the tenant stated that she was served with an evidence package by the landlord on June 2, 2018 but that she was unaware the landlord had filed an Application for Dispute Resolution against her. The tenant stated that she thought the landlord's evidence package was his response to her application. I asked the tenant to describe the content of the package served upon her on June 2, 2018. The tenant's description of

documents was consistent with an evidence package but not an Application for Dispute Resolution.

The landlord confirmed that he did serve the tenant with an evidence package on June 2, 2018. I asked the landlord to describe how his Application for Dispute Resolution and Notice of Dispute Resolution Proceeding were served upon the tenant. The landlord indicated he was uncertain when he served his Application for Dispute Resolution to the tenant and asked me to look this information up from the documentation he had uploaded to the Residential Tenancy Branch service portal. I instructed the landlord to provide the requested information orally so that the tenant may hear his testimony and respond to it. The landlord stated that he served his Application for Dispute Resolution to the tenant on June 3, 2018. I asked whether the landlord was certain of this since it was after he served her with evidence on June 2, 2018. The landlord then appeared uncertain and stated he did not have all of his documents before him. The landlord asked to go retrieve some papers from another room and I permitted him the opportunity to do so. When the landlord returned he said he determined the 10 Day Notice was served on May 2, 2018. I informed the landlord that service of the landlord's Application for Dispute Resolution was in question, not the 10 Day Notice. The landlord did not offer any other evidence as to service of his Application for Dispute Resolution upon the tenant.

I proceeded to inform the parties that I would determine the validity and enforceability of the 10 Day Notice and whether the tenancy is at an end due to unpaid rent. After hearing testimony from both parties with respect to determining whether the tenancy was over due to unpaid rent I informed the parties that I would issue an Order of Possession to the landlord. The landlord enquired about his monetary claim and I informed the landlord that he did not satisfy me that he had served the tenant with his Application for Dispute Resolution. The landlord then claimed that he found a document signed by a witness that confirms the tenant was served with evidence and the landlord's Application for Dispute Resolution on June 2, 2018. The tenant denied receiving the landlord's Application for Dispute Resolution. I found the landlord's late found evidence unpersuasive at the end of the hearing after having given the landlord a number of opportunities to prove service earlier in the hearing. Therefore, I dismissed the landlord's monetary claim with leave to reapply.

As to the other remedies sought by the tenant on her Application for Dispute Resolution, I found them moot since the tenancy has already ended. The tenant enquired about seeking compensation from the landlord for loss of access or use of the property. I

informed the tenant that she is at liberty to make another application and seek monetary compensation against the landlord.

On a different procedural matter, I have amended the tenant's Application for Dispute Resolution to identify the rental unit as being the basement unit having heard there are two separate units rented to two different tenants in this building.

Issue(s) to be Decided

1. Has the tenant established a basis for cancelling the 10 Day Notice to End Tenancy for Unpaid rent?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant has been residing at the property for approximately 1.5 years but starting March 1, 2018 the tenant began renting the basement suite only. The landlord collected a security deposit of \$425.00 and the tenant is required to pay rent of \$850.00 plus \$100.00 per month for utilities on the first day of every month for a fixed term of one year.

The tenant did not pay rent that was due on May 1, 2018 and on May 2, 2018 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates the tenant failed to pay rent of \$850.00 on May 1, 2018 and utilities of \$100.00 that were demanded in writing on May 1, 2018. The landlord does not issue written demand letters for utilities but relies upon the tenancy agreement. The tenant testified that she received the 10 Day Notice on May 4, 2018. The tenant failed to dispute the 10 Day Notice on May 9, 2018 and I am satisfied that she failed to dispute the 10 Day Notice within the time limit for doing so.

The parties provided consistent testimony that the landlord received three payments from or on behalf of the tenant by e-transfer after serving the 10 Day Notice, as follows:

- \$200.00 on May 18, 2018
- \$200.00 on May 26, 2018; and,
- \$150.00 on May 29, 2018.

The parties provided consistent testimony that the landlord received no other payments from or on behalf of the tenant after the May 29, 2018 payment and the tenant continues to occupy the rental unit.

The tenant was asked to provide a basis cancelling the 10 Day Notice. The tenant provided the following:

1. The tenant has been unable to access the shared garage, laundry room and storage.
2. The upstairs tenants broke into her unit and assaulted her.
3. There were outstanding repairs although the landlord has made repairs after she served him with her Application for Dispute Resolution.
4. The tenant is on stress leave from work and has suffered a decrease in income.

I informed the parties that the grounds put forward by the tenant do not form a legal basis to not pay rent or for me to cancel the 10 Day Notice and that I was satisfied the tenancy was over due to unpaid rent. I informed the parties that the landlord would be provided an Order of Possession.

With respect to the effective date of the Order of Possession the landlord requested that it be effective as soon as possible considering the landlord has suffered loss of rent for June and July 2018 as well. The tenant requested that she be permitted occupancy until August 1, 2018 because she has yet to find alternative housing.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a lawful right under the Act to withhold or make deductions from rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent from the landlord, such as: overpayment of a security deposit or pet damage deposit; overpaid rent; costs incurred by the tenant to make emergency repairs in accordance with section 33 of the Act; and, authorization had been previously provided to the tenant by an Arbitrator. The circumstances described by the tenant do not form a lawful basis for the tenant to not pay rent that was due. Therefore, I find the tenant was obligated to pay the rent that was due on May 1, 2018.

Where a tenant does not pay rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. The tenant did not pay the outstanding rent within five days. The tenant did file to dispute the 10 Day Notice; however, as explained above, the tenant did not establish a legal basis for not paying the rent. Therefore, I dismiss the tenant's request that I cancel the 10 Day Notice.

Section 55(1) of the Act provides that I must provide the landlord an Order of Possession in certain circumstances. Section 55(1) provides as follows:

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.

In this case, I have dismissed the tenant's request to cancel the 10 Day Notice. Upon review of the 10 Day Notice I am satisfied that it is in the approved form and duly completed. Therefore, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Considering the landlord has suffered unpaid and loss of rent for multiple months and the tenant has continued to occupy the rental unit, I find that it would be unduly prejudicial to the landlord to give the tenant until August 1, 2018 to vacate the unit as she requested. In the circumstances before me, I find it is reasonable to issue an Order of Possession to the landlord effective as soon as possible as he requested. Therefore, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed. The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The remainder of the tenant's application is dismissed as the remedies sought are moot with the end of the tenancy.

The landlord's request for a Monetary Order is dismissed with leave due to insufficient proof of service of his Application for Dispute Resolution upon the tenant.

The tenant also remains at liberty to file another Application for Dispute Resolution against the landlord to seek monetary compensation if she so chooses.

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: July 06, 2018

Residential Tenancy Branch