



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT LRE OLC OPT PSF MNDC CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 17, 2018, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on September 7, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order requiring the Landlord to allow access to the unit/site for the Tenant and/or her guests;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- an order of possession;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- a monetary order for money owed or compensation for damage or loss;
- an order cancelling a notice to end tenancy for unpaid rent or utilities.

The Tenant attended the hearing. The Landlord attended the hearing and was represented by A.N., her son, who assisted with translation. Both the Tenant and A.N. provided affirmed testimony.

The Tenant testified that Landlord was served with the Application package and the Amendment to an Application for Dispute Resolution by registered mail. A.N. acknowledged receipt of these packages. The Landlord did not submit documentary evidence in response to the Application.

Neither party raised any issues with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling a notice to end tenancy for unpaid rent or utilities, and an order of possession. The Tenant has leave to reapply for the remainder of the relief sought, as appropriate.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?
2. Is the Tenant entitled to an order of possession?

Background and Evidence

The Tenant rents a room at the property. Shared kitchen and bathroom facilities are located in a separate part of the rental property that the Tenant accesses through an external door. The parties confirmed the tenancy began on January 12, 2018. Rent is due in the amount of \$500.00 per month. The Tenant advised the rent was usually paid on the 1st and 15th day of the month, but that the Landlord was flexible. A.N. testified rent was due on the first day of each month. The Tenant paid a security deposit of \$250.00, which the Landlord holds.

On behalf of the Landlord, A.N. testified the Tenant has not paid rent when due for the months of July, August, September, and October 2018. Although the parties agreed the Landlord issued a notice to end tenancy for unpaid rent or utilities, a copy was not submitted into evidence.

During the hearing, the Tenant testified that rent was paid to August 31, 2018. She stated that her roommate, S.H., was supposed to pay rent for September and October but did not. The Tenant testified she has left rent unpaid because she has been locked out of her rental unit since September 5, 2018, which was not denied by the Landlord. The Tenant confirmed during the hearing that she wishes to have possession of and occupy the rental unit.

Analysis

In light of the oral and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due. To be effective, a notice to end tenancy issued under section 46 of the *Act* must comply with the form and content requirements of section 52 of the *Act*.

As noted above, neither party submitted a copy of a notice to end tenancy for unpaid rent or utilities into evidence prior to the hearing. Accordingly, during the hearing, the parties were directed to submit this 2-page document to me by 3:00 p.m. on October 12, 2018. Both the Landlord and the Tenant submitted a copy of a proof of service document, not a notice to end tenancy for unpaid rent or utilities in the approved form. Therefore, I find it is more likely than not that the Landlord did not issue a valid notice to end tenancy for unpaid rent or utilities. I order that the tenancy will continue until otherwise ended in accordance with the *Act*.

Further, the Tenant indicated during the hearing that she wished to have possession of the rental unit. However, she also confirmed in her testimony that rent was not paid for the months of September and October 2018 because she has been locked out since September 5, 2018. As noted above, section 26 of the *Act* requires that rent be paid when due, whether or not the Landlord complies with the *Act*. As I have found the tenancy will continue until otherwise ended in accordance with the *Act*, I grant the

Tenant an order of possession, which will be conditional upon the payment of rent in the amount of \$1,000.00 for the months of September and October 2018. Further, I order that this amount must be paid by October 31, 2018, at 1:00 p.m. If the Tenant fails to pay this amount by October 31, 2018, the Tenant is no longer entitled to possession of the rental unit and I order that the tenancy is ended on October 31, 2018, at 1:00 p.m., pursuant to section 44(1)(f) of the *Act*.

None of my findings above are to be construed as placing any limitation on the Landlord's right to bring a claim for unpaid rent or to request an order of possession pursuant to the *Act*, or on the Tenant's right to claim for losses arising from being locked out of the rental unit.

The parties are strongly encouraged to reduce the tenancy agreement between them to writing to avoid any future uncertainty concerning the payment of rent when due.

Conclusion

I ORDER THAT:

1. The tenancy is continued until otherwise ended in accordance with the *Act*.
2. The Tenant is granted an order of possession, which will be conditional upon the payment of rent in the amount of \$1,000.00 for the months of September and October 2018 (the "Rent Payment").
3. If the Rent Payment is not received by the Landlord by October 31, 2018, at 1:00 p.m., the tenancy is ended pursuant to section 44(1)(f) of the *Act*.

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: October 15, 2018

Residential Tenancy Branch