



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPRM-DR, FFL

Introduction

This matter was the subject of a Direct Request Proceeding. On August 23, 2018 a Residential Tenancy Branch Adjudicator granted the Landlord a monetary Order and an Order of Possession.

The Agent for the Landlord stated that on August 17, 2018 Direct Request hearing package and evidence the Landlord submitted with the Application for Dispute Resolution were sent to the rental unit, via registered mail. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. The Agent for the Landlord stated that the mail has not been returned to the Landlord. The Tenant stated that he did not receive this registered mail.

With the consent of both parties I entered the tracking number on the Canada Post website, which indicated that the Tenant signed for receipt of this package on August 23, 2018. When the Tenant was informed of this information he stated that he does not recall receiving that package.

On the basis of the testimony of the Agent for the Landlord and the information on the Canada Post website, I find that the Tenant received the Direct Request hearing package and associated evidenced on August 23, 2018. Although the Tenant does not recall receiving this package, the evidence indicates that he did. I therefore accept the evidence that the Landlord submitted with the Application for Dispute Resolution as evidence for these proceedings.

The Tenant filed an Application for Review of the August 23, 2018 decision. On August 29, 2018 a Residential Tenancy Branch Arbitrator granted the application for a new hearing and he suspended the monetary Order and Order of Possession.

This hearing has been reconvened to determine the merits of the Landlord's application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing the Application for Dispute Resolution.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Tenant stated that he moved into the rental unit on November 01, 2015. The Agent for the Landlord stated that the Tenant was already living in the unit when he began acting for the Landlord, so he is not certain when the Tenant moved into the rental unit.

The Agent for the Landlord and the Tenant agree that the parties signed a tenancy agreement for a tenancy that began on November 01, 2016.

The Agent for the Landlord and the Tenant agree that at the end of the tenancy the rent was \$1,747.00 per month, due by the first day of each month.

The Agent for the Landlord and the Tenant agree that the parties agreed to meet at the rental unit on August 03, 2018. The Agent for the Landlord stated that he was the first to arrive for this meeting and that he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit upon his arrival.

The Tenant stated that he received the Ten Day Notice to End Tenancy on August 03, 2018 and that he did not file an Application for Dispute Resolution to set aside this Notice. The Notice to End Tenancy, which was submitted in evidence by the Landlord, declares that the rental unit must be vacated by August 15, 2018.

The Tenant stated that he vacated the rental unit on July 15, 2018. He stated that he had fully vacated the rental unit by the time he met the Landlord there on August 03,

2018 and that any personal property that remained on the property or inside the rental unit on that date had been abandoned. He stated that any property that was removed from the property or the rental unit after August 03, 2018 was removed by somebody other than the Tenant.

The Agent for the Landlord stated that when he went to the rental unit on August 03, 2018 he did not go inside the rental unit. He stated that he observed personal property in the garage and in the yard which caused him to believe the Tenant was still living in the unit.

The Agent for the Landlord stated that he returned to the rental unit on August 08, 2018 at which time he noticed that the personal property that had been in the garage and in the yard had been removed. He stated that on the basis of this observation he concluded that the rental unit had been vacated.

The Agent for the Landlord stated that on May 25, 2018 he served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that he must vacate the rental unit by July 31, 2018. This Notice was served pursuant to section 49 of the *Act*.

The Tenant stated that he received the Two Month Notice to End Tenancy for Landlord's Use of Property on May 29, 2018. He stated that he filed an Application for Dispute Resolution seeking to cancel the Two Month Notice to End Tenancy, although he does not recall the file number of that Application nor does he remember the date of that hearing.

Residential Tenancy Branch records show that the Tenant filed an Application for Dispute Resolution seeking to set aside the aforementioned Two Month Notice to End Tenancy. The file number for that matter appears on the first page of this decision.

Residential Tenancy Branch records show that the Tenant's application to set aside that Two Month Notice to End Tenancy was granted at a hearing on July 26, 2018. As a result of that hearing, that Two Month Notice to End Tenancy was of no effect and the tenancy did not end on the basis of that Notice.

The Agent for the Landlord stated that the Tenant after the Two Month Notice to End Tenancy for Landlord's Use of Property was served to the Tenant the Tenant informed him that the Landlord was obligated to provide four months' notice to end a tenancy if he wished to end the tenancy pursuant to section 49 of the *Act*. He stated that on

several occasions he informed the Tenant that the Landlord would amend the effective date of the Notice to provide him with four months' notice to vacate.

The Tenant stated that he informed the Landlord that he was entitled to four months' notice to end a tenancy if the Landlord wished to end the tenancy pursuant to section 49 of the *Act*. He stated that the Landlord never told him that he would amend the effective date of the Notice to provide him with four months' notice to vacate.

The Agent for the Landlord stated that when the parties met on August 03, 2018 the Tenant told him that he would not be moving out. The Tenant stated that on August 03, 2018 the Tenant told him that he had already moved out.

The Tenant stated that sometime in July of 2018 he informed the Agent for the Landlord, via telephone, that he would be vacating the rental unit before the end of July of 2018. The Agent for the Landlord stated that this did not occur.

The Agent for the Landlord and the Tenant agree that the Tenant never provided the Landlord with written notice of his intent to vacate the rental unit.

The Agent for the Landlord and the Tenant agree that the Tenant was never given the equivalent of one month's rent as a result of being served with the Two Month Notice to End Tenancy.

The Agent for the Landlord and the Tenant agree that no rent has been paid for June, July, or August of 2018.

Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord when it is due. If rent is not paid when it is due section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if proper notice is given to the tenant.

On the basis of the undisputed evidence I find that on August 03, 2018 the Tenant was served with the Ten Day Notice to End Tenancy that is the subject of these proceedings.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the

tenancy ended on the effective date of that Notice to End Tenancy, which was August 15, 2018.

Section 44(1)(a) of the stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

I find that this tenancy did not end on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent that was served to the Tenant on August 03, 2018, because the Tenant had already vacated the rental unit by August 15, 2018.

On the basis of the undisputed evidence I find that a Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant in May of 2018. I find that the tenancy did not end on the basis of this Two Month Notice to End Tenancy for Landlord's Use, because this Notice was set aside at a dispute resolution hearing on July 26, 2018.

Section 45 of the *Act* authorizes a tenant to end a periodic tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As there is no evidence that the Tenant provided the Landlord with written notice to end this tenancy, I find that the Tenant did not end the tenancy in accordance with section 45 of the *Act*.

I therefore find that this tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that there is insufficient evidence to conclude that the Tenant vacated the rental unit on July 15, 2018. In reaching this conclusion I was

heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the rental unit was vacated on July 15, 2018 or that refutes the Agent for the Landlord's testimony that the rental unit appeared occupied on August 03, 2018.

On the basis of the Agent for the Landlord's testimony that the rental unit appeared vacant on August 08, 2018, I find it reasonable to conclude that this tenancy ended sometime between July 15, 2018 and August 08, 2018, pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant remained obligated to pay the rent that was due on August 01, 2018 even if the Tenant vacated the rental unit prior to that date. I find that the Tenant did not have the right to end the tenancy by August 01, 2018 because he did not provide proper written notice to end the tenancy on that date, as was required by section 45 of the *Act*. In the absence of such notice he remained obligated to pay the rent for August, even if he vacated the rental unit prior to August 01, 2018.

I find that the Tenant remained obligated to pay the rent that was due on August 01, 2018 because the Ten Day Notice to End Tenancy for Unpaid Rent the Landlord had served did not end the tenancy until August 15, 2018.

I find that the Tenant remained obligated to pay the rent that was due on August 01, 2018 because the Two Month Notice to End Tenancy for Landlord's Use the Landlord had served was set aside at a hearing on July 26, 2018 and the tenancy did not, therefore, end on the basis of this Notice.

On the basis of the undisputed evidence I find that the Tenant did not pay any rent for June, July, or August of 2018. As the evidence shows that he was residing in the rental unit in June and July of 2018, I find that he was obligated to pay rent for those months, in the amount of \$3,494.00. As previously stated, the Tenant was also obligated to pay the rent that was due on August 01, 2018, which is \$1,747.00.

In adjudicating this matter I was mindful of section 51(1) of the *Act*, which stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Although the Tenant received a Notice to End Tenancy served pursuant to section 49 of the *Act*, a Residential Tenancy Branch Arbitrator subsequently determined that the Notice was of no effect or effect. The Arbitrator's determination that the Notice was of no effect also means, in my view, that the Tenant is not entitled to compensation pursuant to section 51(1) of the *Act*.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Agent for the Landlord and the Tenant agree that the rental unit has now been vacated, I find that the Order of Possession that was granted on August 23, 2018 is no longer required. I therefore cancel that Order of Possession.

I find that the Landlord has established a monetary claim, in the amount of \$5,341.00, which includes \$5,241.00 in unpaid rent and \$100.00 in compensation for the cost of filing this Application for Dispute Resolution. As this is the same amount that was awarded in the decision of August 23, 2018, I can see no reason to vary or set aside that Order. The monetary Order of August 23, 2018 remains in full force and effect.

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 19, 2018

Residential Tenancy Branch