



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC

Introduction

On September 1, 2018, the Tenant made an Application for Dispute Resolution to cancel a 1 Month Notice To End Tenancy For Cause. On September 12, 2018, the Tenant amended his application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 11, 2018. On October 3, 2018, the Tenant amended his application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018, and a request for monetary compensation.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant provided documentary evidence to the residential tenancy branch prior to the hearing. The Tenant testified that he did not serve a copy of his documentary evidence to the Landlord. He testified that he did not know that he was required to do so.

I find that the Tenant contravened the Residential Tenancy Branch rules of procedure by failing to disclose his evidence to the Landlord prior to the hearing. The Landlord has not received the evidence or had an opportunity to consider it and respond to it. It would be unfair to the

Landlord to accept and consider the tenant's evidence. Accordingly, the Tenant's evidence will not be considered in this hearing. The Tenant was provided the opportunity to provide direct testimony regarding the evidence.

The Landlord provided documentary evidence and the Tenant testified that he received it one week prior to the hearing.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that most important matter to determine is whether or not the tenancy is ending. The Tenant's claim for compensation is dismissed with leave to reapply.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy based on the issuance of the 10 Day Notices or the 1 Month Notice?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began on April 12, 2018 as a 1 year fixed term tenancy. Rent in the amount of \$2,365.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,182.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant was served with the following notices to end tenancy:

- 1 Month Notice To End Tenancy For Cause dated August 31, 2018
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 11, 2018
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018

The Tenant acknowledged that he received the notices to end tenancy and I find that the Tenant disputed the notices to end tenancy within the required time periods.

The 10 Day Notice dated September 11, 2018, states that the Tenant has failed to pay rent in the amount of \$2,365.00 which was due on September 1, 2018. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenant's rent cheque for September was returned as "NSF". The Landlord testified that the Landlord has not received any rent from the tenant since serving the 10 Day Notice.

In response, the Tenant testified that he did not pay the rent because he feels the Landlord is bullying him. He testified that the bullying has triggered his post traumatic stress disorder and he has anxiety and depression and is unable to work.

The Tenant testified that he has not paid any of the rent due under the tenancy agreement for the months of September and October 2018.

The Tenant testified that he filed a human rights case against the Landlord. The Tenant requested that any decision from this hearing should be suspended until the outcome of his human rights case.

The Landlord seeks an immediate order of possession for the rental unit.

Analysis

Section 26 of the Act states that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant did not pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice dated September 11, 2018.

I find that the Tenant also failed to pay the rent for October 2018.

I find that the Tenant does not have a legal right to withhold payment of the rent. I dismiss the Tenant's application to cancel the 10 Day Notice dated September 11, 2018, and October 2, 2018.

I find that the Tenant's application to the Human Rights Tribunal is not relevant to my finding that the Tenant did not have a legal right under the Act to withhold payment of rent. It would present significant financial prejudice to the Landlord to await an outcome of the Tenant's human rights application.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice dated September 11, 2018, complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice. The Tenant did not have a legal right to withhold payment of rent. The tenancy is ending.

The Landlord is granted an order of possession effective 2 days after service on the Tenant.

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