



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDCT, OLC (Tenant)
 MNRL-S, OPC, OPL, OPU (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application July 5, 2018 (the “Tenants’ Application”). The Tenants applied as follows: to dispute a One Month Notice to End Tenancy for Cause dated June 25, 2018 (the “One Month Notice”); to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated May 12, 2018 (the “Two Month Notice”); for an order that the Landlords comply with the *Residential Tenancy Act* (the “Act”), the *Residential Tenancy Regulation* (the “Regulations”) or the tenancy agreement; and for compensation for monetary loss or other money owed.

The Landlords filed their application July 16, 2018 (the “Landlords’ Application”). The Landlords applied as follows: to recover money for unpaid utilities; to keep the security deposit; for an Order of Possession based on the One Month Notice; for an Order of Possession based on the Two Month Notice; for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23, 2018 (the “10 Day Notice”).

The Landlords had submitted an amendment to the Application on July 19, 2018 (the “Amendment”). The Amendment relates to the Landlords’ address for service and clarifies the dates the Notices to End Tenancy were served.

This matter originally came before me August 21, 2018. The matter had to be reconvened and I issued an Interim Decision in this regard on August 24, 2018. This decision should be read in conjunction with the Interim Decision.

The Tenants attended the reconvened hearing. Landlord B.V. and J.G. attended the reconvened hearing. The wife of Landlord J.G. also attended although she is not named on either the Tenants' Application or Landlords' Application (the "Applications").

I explained the hearing process to the parties who did not have questions when asked. All parties provided affirmed testimony.

I did not address service issues at the reconvened hearing as these were addressed in my Interim Decision. No further evidence had been submitted prior to the reconvened hearing.

During the reconvened hearing, the Landlords withdrew their application for an Order of Possession based on the 10 Day Notice.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

Tenants' Application:

1. Should the One Month Notice be cancelled?
2. Should the Two Month Notice be cancelled?
3. Should the Tenants be granted an order that the Landlords comply with the *Residential Tenancy Act* (the "*Act*"), the *Residential Tenancy Regulation* (the "*Regulations*") or the tenancy agreement?
4. Are the Tenants entitled to compensation for monetary loss or other money owed?

Landlords' Application:

1. Are the Landlords entitled to recover money for unpaid utilities?
2. Are the Landlords entitled to keep the security deposit?

3. Are the Landlords entitled to an Order of Possession based on the One Month Notice?
4. Are the Landlords entitled to an Order of Possession based on the Two Month Notice?

Background and Evidence

The Tenants had submitted a Shelter Information form in relation to the tenancy. Both parties agreed this is the only written document regarding the tenancy. It was undisputed that Landlord J.V. and Landlord B.V. were the original landlords. Landlord J.G. advised that him and M.G. purchased the home that the rental unit is in and therefore became the landlords July 31, 2018.

Landlords J.V. and B.V. agreed Tenant M.S. was a tenant but took the position that Tenant D.C. was only an occupant in the rental unit. Tenant M.S. said Landlord J.V. knew Tenant D.C. was moving into the rental unit and referred to the Shelter Information form submitted. I do not find it necessary to determine whether Tenant D.C. is a tenant or occupant as this hearing deals with an Order of Possession which will apply to Tenant D.C. whether he is a tenant or occupant.

Both parties agreed on the following. The tenancy started October 31, 2017 and is a month-to-month tenancy. The Tenants currently pay \$700.00 in rent and \$76.00 for utilities per month. Rent is due on the first of each month. The Tenants paid a security deposit of \$350.00.

In relation to the Two Month Notice, Landlord B.V. testified that she served the Two Month Notice to Tenant D.C. in person May 12, 2018. Tenant D.C. testified that he received the Two Month Notice May 12, 2018 in person from Landlord B.V.

Tenant D.C. confirmed the Tenants' Application was filed July 5, 2018. The Tenants did not apply to extend the time limit for them to dispute the Two Month Notice.

I raised the issue of the Tenants filing the Tenants' Application outside the time limit for doing so in relation to the Two Month Notice. Tenant D.C. said the Tenants did not know how much time they had to dispute the Two Month Notice. He said Landlord B.V. took the Two Month Notice back a few days after it was served on him. Landlord B.V.

disputed this. The Tenants could not point to any evidence to support their position on this issue.

At the reconvened hearing, Landlord B.V. testified that she served both pages of the Two Month Notice on the Tenants. The Tenants acknowledged receiving two pages of the Two Month Notice but said they did not receive the third page.

At the reconvened hearing, the Tenants testified that Landlord B.V. took the Two Month Notice back the same day she served it on the Tenants. Tenant M.S. pointed to a text message from July 9, 2018 in this regard.

I did not have a copy of the Two Month Notice that was served on the Tenants in evidence before me. Landlord B.V. said this had been submitted. I allowed the Landlords to re-submit a copy of the Two Month Notice given the Tenants acknowledged receiving it on May 12, 2018. The Landlords did submit a copy of the Two Month Notice.

The Two Month Notice is addressed to Tenant M.S. It refers to the rental unit. It is signed and dated May 12, 2018 by Landlord J.V. It has an effective date of July 31, 2018. It states the grounds as "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

I heard Landlord J.G. on the grounds for the Two Month Notice which I will not detail here given my decision on this issue.

In relation to the utilities issue, Landlord B.V. testified that the Tenants agreed they would pay for gas and hydro and that they would pay half of the utilities each month. She said this was a verbal agreement. Landlord B.V. testified that the Tenants owed \$195.00 as of March 29, 2018. She said the Tenants paid \$120.00 in April. Landlord B.V. testified that \$117.00 is outstanding since April. She said the Ministry sends \$76.00 to cover utilities but that this only covers a portion of the utilities.

Tenant D.C. testified that the Tenants agreed to pay some of the utilities but not all the utilities Landlord B.V. said they did. He raised the issue of the Tenants overpaying previous utility bills.

I heard evidence on the One Month Notice which I will not detail here given my decision.

Analysis

The Two Month Notice was received by the Tenants prior to May 17, 2018, when the legislative changes came into effect, and therefore the legislation in force prior to May 17, 2018 applies.

The Two Month Notice was issued under section 49(5) of the *Act*. Pursuant to section 49(8) of the *Act*, the Tenants had 15 days from the date they received the Two Month Notice to dispute it.

The Tenants did not dispute the Two Month Notice within 15 days of receiving it on May 12, 2018. The Tenants did not file the Tenants' Application disputing the Two Month Notice until almost two months after they received the Two Month Notice.

When the Tenants did file the Tenants' Application, they did not apply to extend the time limit to dispute the Two Month Notice.

I do not accept that Landlord B.V. took the Two Month Notice away from the Tenants. The parties gave conflicting evidence on this point. The Tenants gave different testimony on this point during the reconvened hearing than they had during the original hearing. Further, the Tenants acknowledged submitting evidence they knew to be false for the hearing. Although the false evidence relates to a different issue, this calls into question the credibility of the Tenants. I do not find the Tenants' testimony about Landlord B.V. taking the Two Month Notice to be reliable or credible. The Tenants did not have any evidence to support their position. I have reviewed the text messages submitted by the Tenants and do not find that these support their position.

I note that the Tenants must have determined it was appropriate to dispute the Two Month Notice at some point as they did so July 5, 2018. I am not satisfied that the Tenants have shown that exceptional circumstances existed such that the time to file the dispute of the Two Month Notice should be extended.

Section 49(9) of the *Act* in force at the time stated:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find the Tenants did not dispute the Two Month Notice in accordance with section 49(8) as they did not dispute the Two Month Notice within 15 days of receiving it. Therefore, pursuant to section 49(9) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended on July 31, 2018, the effective date of the Two Month Notice.

The Two Month Notice must comply with section 52 of the *Act*. I have reviewed the Two Month Notice and find that it does comply with section 52 of the *Act*.

I note that the Tenants said they did not receive the third page of the Two Month Notice. The Two Month Notice served on the Tenants on May 12, 2018 was only two pages. The three-page notices to end tenancy were not in use prior to May 17, 2018.

I find the Landlords are entitled to an Order of Possession based on the Two Month Notice. I issue the Order of Possession to Landlord J.G. only as Landlord J.V. and B.V. no longer own the property. The Order of Possession is effective two days after service on the Tenants. The Landlords will need to reimburse the Tenants for any rent paid past the date the Tenants occupy the rental unit. Further, the Tenants are entitled to compensation equivalent to one months rent pursuant to section 51(1) of the *Act* if this has not already been dealt with.

I am not satisfied based on the evidence of the Landlords that they are entitled to recover money for unpaid utilities. Pursuant to rule 6.6 of the Rules of Procedure, the Landlords have the onus to prove their claim in this regard. The Shelter Information form indicates utilities are not include in the rent. However, the form provides no further details. The parties disagreed on what utilities the Tenants are responsible for. Landlord B.V. said the agreement was a verbal agreement and did not point to any evidence to support her position about the agreement. In the circumstances, I am not satisfied the Tenants owe the Landlords \$117.00 for utilities and decline to order that amount.

Given my decision above, the following issues are no longer an issue and are dismissed without leave to re-apply:

Tenants' Application:

1. Whether the One Month Notice should be cancelled.

Landlords' Application:

1. Whether the Landlords are entitled to an Order of Possession based on the One Month Notice.

I asked the Tenants about the remainder of their application and what they were seeking. It was not made clear to me what the Tenants were seeking. The Tenants did say they were seeking two or twelve months rent in compensation for the Landlords not following through with the stated purpose of the Two Month Notice. I advised the Tenants that this application is premature. Part of the Tenants' Application relates to the return of the security deposit. I told the Tenants this is also premature. I dismiss the remainder of the Tenants' Application with leave to re-apply.

Conclusion

The Landlords are entitled to an Order of Possession based on the Two Month Notice. Landlord J.G. is granted an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court. The Landlords will need to reimburse the Tenants for any rent paid past the date the Tenants occupy the rental unit.

The Landlords' request to recover money for unpaid utilities and to keep the security deposit are dismissed without leave to re-apply.

The Tenants' requests for an order that the Landlords comply with the *Act*, the *Regulations* or the tenancy agreement and compensation for monetary loss or other money owed are dismissed with leave to re-apply.

The remaining issues are moot given my decision and therefore are dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 07, 2018

Residential Tenancy Branch