



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDCT, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order for the landlord to make repairs to the rental unit pursuant to section 32.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's application or evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

A previous Decision was rendered on September 6, 2018 regarding this tenancy. The file numbers have been included on the front page of this Decision for ease of reference. The Arbitrator found, based on the evidence presented, that the 10 Day Notice was undated and therefore upheld the tenant's application to cancel the notice. In this decision, the Arbitrator dismissed the landlord's application and ordered the tenant to provide the landlord with a key to access the unit, ordered the landlord to; repair the windows, have the electrical outlets tested and repaired if necessary, and repair or replace the post on the porch.

Preliminary Issue – Sever

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 10 Day Notice. Accordingly I find the remaining portion of the tenant's application must be severed and must be dealt with separately through an application.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed that this tenancy, based on an oral agreement established monthly rent in the amount of \$1,600.00. The parties confirmed that the tenant remitted a security and pet deposit in the total amount of \$1,600.00 on April 27, 2018, which the landlord still retains in trust.

The parties provided conflicting testimony in relation to the tenancy start date and rent due date. Essentially, the tenant contends that because she only obtained possession of the unit on June 15, 2018, that became the tenancy start date. She testified that she prepaid June rent on May 19, 2018 by way of e-transfer and that all future payments were payable on the 15th of each month. The landlord argues that the tenancy began May 15, 2018 and has provided witness testimony to substantiate this. He testified that the rent paid on May 19, 2018 was for the period of May 15, 2018 to June 14, 2018. The landlord testified that the parties agreed rent would be payable on the 15th for the first month of May then on the 15th of June the tenant would pay a half months' rent and finally on July 1, rent would become payable, making it due on the first of each month.

The landlord seeks to end this tenancy on the basis of a 10 Day Notice dated September 11, 2018. The tenant confirmed receipt of this 10 Day Notice on September 14, 2018. The notice indicates that the tenant failed to pay rent in the amount of \$3,200.00 that was due on June 15, 2018. The tenant seeks to cancel this notice on

the premise that she has paid all rent due on June 15, 2018 with her one-time payment on May 19, 2018.

Analysis

Pursuant to section 16 of the *Act*, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy, that is, the right to occupy the unit, often begins at a later date. In this case, I find the event that triggered the tenancy was the payment of the security deposit on April 27, 2018. Because the tenancy agreement began on April 27, 2018, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

The *Act* obligates the tenant to pay rent in exchange for possession of the unit. Based on the documentary evidence and testimony of the landlord's witness I am satisfied that the tenant obtained possession of the unit on May 15, 2018. The witness, who resides on the upper level of the rental unit, was forthcoming and credible. He provided details of a trailer coming and going, boxes being moved in, and noises of everyday living from May 15, 2018 onwards. With this finding, I am satisfied that the rent paid on May 19, 2018 constitutes rent for the period of May 15, 2018 to June 14, 2018; not for the period of June 15, 2018 to July 14, 2018 as claimed by the tenant. Further, I find that in the absence of a written tenancy agreement, this one-time payment establishes that rent is payable on the 15th of each month.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. Pursuant to my finding that rent is payable on the 15th of each month, I find that the tenant was obligated to pay rent for the period June 15, 2018 to July 14, 2018 on June 15, 2018 and failed to do so.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

The 10 Day Notice indicates rent in the amount of \$3,200.00 was due on June 15, 2018 and remains outstanding. Based on my previous finding that rent has been paid from May 15, 2018 to June 14, 2018 I find that the notice should have reflected an outstanding amount of \$1,600.00. Despite this error, I find the notice meets the provisions of section 52 of the *Act*. Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice and find that landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Conclusion

As the tenancy is set to end, the tenant's application for an order; to suspend or set conditions on the landlord's right to enter the rental unit, to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, and for the landlord to make repairs to the rental unit is dismissed without leave to reapply.

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

I grant an order of possession to the landlord effective two (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: November 02, 2018

Residential Tenancy Branch