



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, ERP, RP, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenants DP and MP (collectively "the tenant") and landlords SG and HP (collectively 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 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*.

Preliminary Issue – Sever

Rule 2.3 of the Residential Tenancy Branch *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 1 Month Notice. Accordingly I find the remaining portion of the tenants' application must be severed.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on April 1, 2008 on a month-to-month basis. Rent in the amount of \$975.00 is payable on the last day of each month. The tenants remitted a security deposit in the total amount of \$487.50 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The tenants confirmed receipt of the 1 Month Notice, dated September 28, 2018, posted to the rental unit door. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant is repeatedly late paying rent
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord testified to four instances in which the tenants paid rent late in 2018. The landlord has submitted a copy of a rent ledger for this tenancy. The landlord submits that the tenants breached the tenancy agreement in June 2018 when the tenants sublet a room in their unit to a woman and child.

In reply, the tenants confirm they have been late paying rent a minimum of three times. The tenants dispute the landlord's allegation that they have sublet a room in their unit; rather the tenant testified that they were helping a woman and child in need.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant is repeatedly late paying rent. The onus is on the landlord to prove the tenant is late paying rent, a minimum of three times. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement.

Based on the landlord's undisputed testimony and submitted rent ledger, I find the tenants have repeatedly paid rent past the date indicated in the tenancy agreement. Accordingly, I find the landlord has met the onus and dismiss the tenants' application to cancel the 1 Month Notice.

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, and the tenant's application is dismissed, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content. 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.

Based on the notice before me, I find the 1 Month Notice complies in form and content. As the tenants' application has been dismissed I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the tenancy is set to end, the severed portion of the tenants' application is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' entire application is dismissed without 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 06, 2018

Residential Tenancy Branch