



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC MNDC, FFT

Introduction

On November 12, 2018, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2018.

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 evidence was reviewed and confirmed received by each party. 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

On November 9, 2018, the Landlord applied by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* for an Order of Possession based on unpaid rent and a Monetary Order. The Landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018.

On November 14, 2018, an Arbitrator found that the 10 Day Notice was defective and set it aside. The Arbitrator ordered the tenancy to continue until it is ended in accordance with the *Act*.

Since the 10 Day Notice was set aside, there is no need to proceed with the Tenants request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018.

The hearing proceeded based on the Tenants' request for the Landlord to comply with the Act, regulation, or tenancy agreement and for compensation.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began June 1, 2017, as a fixed term tenancy for one year that has continued thereafter on a month to month basis. Rent in the amount of \$1,200.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$600.00.

The Tenants submitted that they want the Landlord to comply with the Act regarding making applications for an order of possession.

The Tenant testified that he is deemed to have received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 5, 2018. He testified that he paid the rent owing within five days of receiving the 10 Day Notice. The Tenant testified that the Landlord should not have applied until the five day period to pay rent had expired. The Tenant testified that he informed the Landlord that they were travelling to Europe.

In reply, the Landlord testified that she waited until November 2, for the rent to be paid then issued the 10 Day Notice. The Landlords contacted the Residential Tenancy Branch and explained they had served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the Tenants. The Landlord testified that she was informed that she could apply for an order of possession and a monetary order by way of Direct Request.

The Landlord applied for an order of possession on November 9, 2018. The Landlords application was not successful and they were not granted an order of possession. The Landlord submitted that the Tenants did not tell the Landlord that they would be away.

The Tenant testified that due to the Landlord actions of applying for an order of possession, the Tenant had to rush around and deal with the potential end of tenancy. The Tenant testified that he suffered a loss of quiet enjoyment. The Tenant is seeking compensation of \$150.00.

The Tenants are also claiming for costs to file the application. The Tenants are seeking \$30.00 and to recover the \$100.00 cost of the filing fee.

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.

I find that the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the Tenants breached the tenancy agreement by failing to pay the rent when it was due on November 1, 2018. I find that the 10 Day Notice was deemed received by the Tenants on November 5, 2018; three days after the Notice was placed in the Tenant's mailbox.

Under section 55(2)(b) of the Act a Landlord has the right to apply for an order of possession when the time to dispute a notice has expired. I find that the Landlords actions of applying for an order of possession for the rental unit were not egregious. I accept that the Landlords were following the advice provided by the Residential Tenancy Branch and there was confusion on when the Notice was deemed to be received.

I find that the Landlords actions of serving the 10 Day Notice and applying for an order of possession stem from the Tenants breach of the tenancy agreement regarding payment of rent. I find that any loss of enjoyment of the tenancy is attributable to the Tenant's breach. While I accept that the Landlord applied for an order of possession too soon, I find that the Landlords actions were not malicious or intentionally fraudulent.

The Landlord did not receive an order of possession and the tenancy has continued. For these reasons I dismiss the Tenant's application to be compensated.

I order the Landlord to comply with section 55 (2)(b) of the Act by not applying for an order of possession until after the time to dispute a notice has expired.

I also dismiss the Tenant's application to be compensated in the amount of \$30.00 for costs to file their application. The Tenants did not provide any testimony regarding these costs and they have also applied to recover the cost of the filing fee. I find that these costs are not recoverable from the Landlord.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants filed their application prior to knowing the outcome of the Landlords Direct Request Application, the Tenants are entitled to recover the cost of the application from the Landlords. I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018, was set aside on November 14, 2018, and the tenancy was ordered to continue until it is ended in accordance with the *Act*.

I order the Landlords to comply with section 55 (2)(b) of the Act by not applying for an order of possession until after the time to dispute a notice has expired.

The Tenants request for compensation for a loss of quiet enjoyment and preparation costs are dismissed without leave to reapply.

I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment for the cost of the filing fee for this hearing.

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: December 21, 2018

Residential Tenancy Branch