



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP,

Introduction

On November 13, 2018, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and for an order that the Landlord make repairs to the rental unit.

The matter was set for a conference call hearing. The Tenant and Landlord's agent ("the 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

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 the most important matter to determine is whether or not the tenancy will end due to non-payment of rent. The Tenant's request for repairs is dismissed with leave to reapply.

Issues to be Decided

- Should the 10 Day Notice dated November 8, 2018, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord testified that in April 2016, he entered into a Tenancy agreement with a person named Dan. Dan rented out the entire house for \$1,200.00 per month and sublet the lower part of the house to a sub-tenant with the Landlord's permission. When Dan moved out of the rental unit in March 2018, the Landlord discovered Mr. E.E. ("the Tenant") living in the rental unit. Apparently Dan had permitted the Tenant to live in the rental unit as a roommate. The Landlord testified that he did not have a contractual agreement with the Tenant at that time and did not sign a new tenancy agreement with the Tenant since.

The Landlord testified that he offered the tenancy of the entire house to the Tenant; however, the Tenant has refused to sign the agreement. The Landlord testified that the Tenant has continued to live in the rental property and has only been paying a portion of the rent owing under the original tenancy agreement.

The Tenant testified that he wants to sign the tenancy agreement for the entire house but has not done so because he wants the Landlord to complete repairs to the unit. The Tenant feels he is only responsible to pay \$600.00 per month rent for the upper part of the rental home.

The Landlord testified that the Tenant has not even paid the amount of rent that the Tenant suggests is owing. The Landlord submitted that from April to October 2018, the total amount of rent owing is \$8,400.00. The Landlord submitted that the total amount of rent received is \$3,270.00. The Landlord submitted that \$5,130.00 is the amount of rent outstanding.

The Landlord submitted that the Tenant has only paid \$1,770.00 during this time period as the amount of \$1,500.00 was received from the sub-tenant. The Landlord provided a copy of a text message dated September 30, 2018, where the Tenant is asked when

the rent will be deposited and indicates that the Tenant owes so much rent for the past year.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2018, ("the Notice") in person on November 8, 2018.

The Notice states that the Tenant has failed to pay rent in the amount of \$5,130.00 which was due on November 1, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice. The Landlord is requesting an order of possession for the rental unit.

In response, the Tenant testified that he has withheld the payment of rent to the Landlord because he wants the Landlord to complete repairs to the 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.

I find that despite the Tenant's refusal to sign a tenancy agreement, the Tenant has continued to live on the property for 10 months and has made partial payments towards the monthly rent owing. I find that by the Landlord's acceptance of the partial rent payments; and in the absence of a new agreement with new terms and conditions, the parties entered into an oral tenancy agreement.

While I accept that the Tenant wants repairs made to the unit and that's why he withheld payment of rent; I find that this does not amount to a legal right to withhold payment of the rent. The Tenant could have applied for dispute resolution seeking an order that the Landlord repair the unit. Even if I accepted that the Tenant only owes \$600.00 each month for rent, I find that the Tenant would owe \$4,200.00 in rent over the seven month period and I find that the Tenant only paid \$1,770.00 in rent during that period.

I find that the Tenant failed to pay an amount of rent due under the tenancy agreement within five days of receiving the 10 Day Notice. I find that the Tenant has fundamentally breached the tenancy agreement. The Tenant's request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2018 is dismissed.

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 complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective two (2) 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 an amount of rent due under the tenancy agreement within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2018 and did not have a legal right to withhold payment of the rent.

The Tenants application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

The Landlord is granted an order of possession 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: December 27, 2018

Residential Tenancy Branch