



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, CNR, CNC, OLC, RP, DRI, LRE, RR

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On November 14, 2018, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. On December 3, 2018, the Landlord amended his application to include a request for an order of possession based on the issuance of a 1 Month Notice To End Tenancy For Cause.

On November 9, 2018, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a 1 Month Notice To End Tenancy For Cause. The Tenant also applied for the following relief:

- For the Landlord to comply with the Act, Regulations or tenancy agreement.
- For repairs and emergency repairs to the unit.
- For a rent reduction.
- To dispute a rent increase.
- To set conditions on the Landlords right to enter the unit.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. 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. The Tenant’s documentary evidence was not served on the Landlord and was excluded from 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 is ending based on Cause or non-payment of rent. The Tenant's claims for compensation due to an illegal rent increase and a rent reduction are dismissed with leave to reapply.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to non-payment of rent?
- Does the Landlord have sufficient cause to end the tenancy?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on February 1, 2017. At that time, rent in the amount of \$600.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$300.00. The parties disagreed on whether the tenancy was on a month to month or a fixed term basis. In December 2017, at the Landlords request, the Tenant began paying \$1,190.00 per month rent.

Neither the Landlord nor Tenant provided a copy of a tenancy agreement.

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 3, 2018, ("The 10 Day Notice") The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,190.00 that was due on November 1, 2018.

The 10 Day 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 Tenant disputed the 10 Day Notice within the required time period.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement within 5 days of receiving of the 10 Day Notice. The Landlord testified that the Tenant has not paid the rent owing for November 2018, and December 2018. The Landlord is requesting an order of possession for the rental unit and a monetary order in the amount of \$2,380.00.

In reply, the Tenant testified that the Landlord has failed to complete a form that the Ministry needs to assess and approve his benefits. The Tenant testified that he has withheld payment of the November and December 2018, rent because the Landlord did not complete the form correctly.

In reply, the Landlord testified that the first he heard of the Tenant being on benefits was August 2018, and the Landlord received the form and completed it in September 2018.

1 Month Notice

The Landlord testified that the Tenant was served with a 1 Month Notice To End Tenancy dated November 3, 2018. The reason for ending the tenancy within the 1 Month Notice is:

Tenant is repeatedly late paying rent

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenant disputed the 1 Month Notice on November 9, 2018 within the required time period.

Analysis

10 Day Notice

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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

I find that the Tenant failed to pay the rent owing under the tenancy agreement for the months of November and December 2018. While I understand the Tenant's explanation that he is waiting for benefits, I find that the explanation does not amount to a legal right to withhold payment of the rent. The Tenant is obligated to pay the rent when it is due and the Landlord has suffered a loss of rent for two months. I find that the Tenant has fundamentally breached the tenancy agreement with respect to payment of rent. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notice dated November 3, 2018.

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.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application to set aside the 1 Month Notice. I authorize the Tenants to deduct the amount of \$100.00 from one future rent payment.

I grant the Landlord a monetary order for unpaid rent and the filing fee in the amount of \$2,480.00.

Since the tenancy is ending based on the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities there is no need to consider the 1 Month Notice To End Tenancy For Cause dated November 3, 2018.

Conclusion

The Tenant failed to pay the rent and did not have a legal right to withhold payment of the rent due under the tenancy agreement. The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 3, 2018, is dismissed.

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective 2 days after service on the Tenant.

I grant the Landlord a monetary order for unpaid rent and the filing fee in the amount of \$2,480.00.

The Tenant's claims for compensation due to an illegal rent increase and a rent reduction are dismissed with leave to reapply.

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 18, 2018

Residential Tenancy Branch