



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, FFT

Introduction

This hearing was scheduled in response to 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;
- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

Preliminary Issue – Service of Application

At the outset of the hearing, the tenant testified that he personally served the landlord with the hearing package on November 24, 2018. The tenant confirmed he did not provide any documentary evidence, just the hearing package. The landlord denied receipt of the hearing package from the tenant. The landlord testified that she received notification of the hearing through an email from the Residential Tenancy Branch ("RTB").

As per section 59 of the *Act*, a party that files an application for dispute resolution with the RTB must serve the other party the full particulars of the dispute within three days of making the application. The purpose of this provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself. In this case, the tenant did not serve any evidence and the landlord acknowledged notice of the hearing. For these reasons, I find pursuant to section 71 of the *Act*, the application was sufficiently served.

Preliminary Issue – Service of Landlord's Evidence

The landlord testified that on an undisclosed date she forwarded the landlord's evidence package via registered mail to the tenant. The landlord did not provide a Canada Post receipt or tracking number as proof of service. The tenant denied receipt of the landlord's evidence package. In the absence of confirmation of service by the tenant, a date of service or tracking number, I find that the landlord has not established she has served the evidence package as required under the *Act*. For this reason, I have not relied on it to form any part of my decision.

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?

Is the tenant entitled to a monetary order for damage or compensation under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The parties provided conflicting testimony on the start date of the tenancy, which they agreed was based on an oral agreement. The tenant contended the tenancy started November 2017 whereas the landlord testified it started April 1, 2018. During the hearing, the parties agreed rent in the amount of \$2,400.00 is payable on the last day of each month. The tenant remitted a security deposit in the amount of \$1,200.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant confirmed receipt of the 10 Day Notice on November 19, 2018. This 10 Day Notice indicates rent in the amount of \$2,400.00 remains outstanding and states an effective move-out date of November 26, 2018.

The tenant acknowledged that November rent remains outstanding. The tenant testified that rent was not paid because he lost his sub-tenants as a result of the landlord's harassment and failure to attend to needed repairs. The tenant seeks monetary compensation in the amount of \$12,000.00 for the landlord's failure to make repairs and loss of rent from sub-tenants.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the RTB. The tenant filed the application within five days but at no time argued that rent had been paid in full; instead he testified that the landlord's harassment and failure to attend to needed repairs resulted in the loss of his sub-tenants and his ability to afford the rent.

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*, *Regulations* or tenancy agreement. Under the *Act*, the tenant was obligated to pay November rent 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.

Based on the testimony of the parties and the notice before me, I find that the tenant was served with an effective notice. Accordingly I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenant provided insufficient evidence to substantiate repairs were needed and that any loss of sub-tenants was attributed to landlord harassment or failure to make

repairs. The tenant failed to satisfy the first element of the above test. Accordingly, the tenant's monetary claim in the amount of \$12,000.00 is dismissed without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid.

Conclusion

The tenant's 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: January 08, 2019

Residential Tenancy Branch