



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, ERP, MNDCT, OLC, PSF, RR, 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 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order requiring the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order requiring the landlord to provide services or facilities required by law pursuant to section 62;
- an order requiring 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.

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. At the outset of the hearing, the landlord confirmed receipt of the tenant's application.

During the hearing, facilitation of a mutual agreement to settle this dispute was attempted, however the parties could not reach an agreement.

Preliminary Issue – Naming of the Landlord

The landlord testified that the tenant intentionally misspelled the landlord's name in the application. The landlord provided what he alleged was the correct spelling. The tenant contended that he did not misspell the landlord's name. He testified that the spelling used in this application was the same spelling used in previous applications to the Residential Tenancy Branch ("RTB"). The tenant did not consent to an amendment.

Upon review of the previous applications filed by the tenant against the landlord, I am satisfied the tenant misspelled the landlord's name in this application. The spelling provided in this application is not the same spelling provided in previous applications. The spelling provided by the landlord is not consistent with the spelling in the previous applications; however it is consistent with the spelling indicted on each notice to end tenancy.

Pursuant to section 64 of the *Act*, I amend the tenant's application to reflect the spelling of the landlord's name provided in the tenant's previous applications and I have included the spelling provided by the landlord as an alias.

Preliminary Issue – Service of Tenant's Evidence

The tenant testified that on December 31, 2018 he forwarded a 34 page evidence package via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. The landlord acknowledged receipt of this evidence package but contended this package was received contrary to Rule 3.14 which establishes that documentary evidence must be received by the respondent not less than 14 days before the hearing. Based on the testimony of the parties and in accordance with sections 88 and 90 of the *Act*, I find that the landlord has been deemed served with this evidence package on January 5, 2019, the fifth day after its registered mailing.

Rule 3.14 sets out that if evidence is received following this timeline, the evidence may or may not be considered depending on whether the applicant can prove this evidence was new and relevant evidence that was unavailable at the time this application was made. The evidence package was deemed served just 9 days prior to the hearing and the tenant did not show this evidence was new and unavailable at the time the application was made. For these reasons, I have not relied on the tenant's 34 page evidence package to form any part of my decision.

Preliminary Issue – Service of Landlord's Evidence

The landlord testified that he served the tenant with the landlord's evidence package on January 4, 2019, by way of posting to the rental unit door where the tenant resides. The landlord provided a photograph dated January 4, 2019, depicting an individual posting paperwork to a door outside a laundry area. The tenant denied receipt of the landlord's evidence package. Based on the landlord's testimony and proof of service in the form of a photograph, I find in accordance with section 88 and 90 of the *Act* the tenant was deemed served the landlord's evidence package on January 7, 2019, three days after its posting.

Preliminary Issue – Sever

Rule 2.3 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 notices and whether emergency repairs were needed. Accordingly I find the remaining portion of the tenant's application must be severed and must be dealt with separately through an application.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 2 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to have the landlord's 10 Day Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

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

Background and Evidence

The landlord assumed this tenancy in July 2016, when the landlord purchased the property from the former landlord. The tenant testified that this tenancy began with the former landlord in March 2007 on a month-to-month basis. A prior hearing held on January 23, 2018 granted the tenant a monthly rent reduction in the amount of \$95.00, for the loss of cablevision and internet. Effective February 1, 2018, rent in the amount of \$655.00 became payable on the first of each month. The tenant remitted a security deposit in the amount of \$350.00 at the start of the tenancy, which the current landlord assumed from the former landlord and now retains in trust.

The tenant acknowledged personal receipt of the landlord's 2 Month Notice and 10 Day Notice each dated November 30, 2018, on this same date. The ground to end the tenancy cited in the 2 Month Notice is the rental unit will be occupied by the landlord or the landlord's close family member. The 10 Day Notice indicates rent in the amount of \$750.00 due December 1, 2017 remains outstanding and states an effective move-out date of December 31, 2018.

The landlord testified that his brother intends to occupy the unit. The landlord testified that the December 2017 rent cheque was stolen from his mailbox and as a result the tenant placed a stop order on the this cheque and issued a new one. The landlord contended that the new cheque did not clear his bank as it too had a stop order placed on it. In support of his position, the landlord has provided copies of two cheques and a bank statement.

It was the tenant's position that the 2 Month Notice was issued in contravention of the *Act*. The tenant contended that the *Act* does not include brother as a close family member. In regards to the landlord's allegation that December 2017 rent remains unpaid, the tenant testified that as far

as he knew, the second cheque he issued for that month cleared his bank account. He testified that the 10 Day Notice issued on November 30, 2018, was the first notification he had that the cheque had not cleared.

Analysis

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Under section 49 of the *Act*, a close family member is defined as the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. Based on the landlord's testimony that his intent is to move his brother into the rental unit, an individual that does not meet the definition of family member, I set aside the 2 Month Notice.

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 and argued that December 2017 rent had been paid in full.

When there is only disputed testimony, documentary evidence can add weight to shift the balance of probabilities in favour of the claimant seeking a remedy. In this case the tenant failed to submit any corroborating documentary evidence that December 2017 rent had been paid, whereas the landlord provided copies of the cheques and a bank statement showing the second cheque was returned because payment was stopped.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. I find that the tenant was put on notice of the unpaid December 2017 rent on November 30, 2018 and it was at this time he should have ensured payment had been made. In the absence of corroborating documentary evidence that it was in fact paid, I find that under the *Act*, the tenant was obligated to pay December 2017 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 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*.

As a finding has been made in relation to the 10 Day Notice and the tenancy is set to end, a finding on the emergency repair is not required. This portion of the tenant's claim 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 for the application.

Conclusion

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 17, 2019

Residential Tenancy Branch