



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR (x2) ERP MNDC

Introduction

This hearing was convened pursuant to an Application for Dispute Resolution made by the Tenant on January 23, 2019, as amended by an Amendment to an Application for Dispute Resolution, dated February 4, 2019 (the “Application”). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the “Act”):

- an order cancelling notices to end tenancy for unpaid rent or utilities (x2);
- an order that the Landlord make emergency repairs for health or safety reasons; and
- a monetary order for money owed or compensation for damage or loss.

The Tenant and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified the Landlord was served with the Application package by registered mail on January 25, 2019. A Canada Post registered mail receipt was submitted in support. In addition, the Tenant testified the amendment was served on the Landlord by registered mail. The Landlord acknowledged receipt of both packages.

Further, the Landlord testified that several evidence packages were served on the Tenant by registered mail. The Tenant acknowledged receipt of 10 packages.

During the hearing, the parties were advised that the hearing would proceed, but that any concerns about service or receipt of documentary evidence could be raised during the hearing. Neither party did so. Both were in attendance and were prepared to proceed with the hearing. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the requests for orders cancelling the notices to end tenancy, with leave to reapply as appropriate.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the notices to end tenancy?
2. If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties confirmed the month-to-month tenancy began on May 1, 2017. Rent in the amount of \$800.00 per month is due on the 28th day of each month. The Tenant paid a security deposit of \$400.00, which the Landlord holds.

The Landlord testified that rent has not been paid when due. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 16, 2018 (the "First 10 Day Notice"). The First 10 Day Notice was in relation to rent due on or before December 28, 2018. During the hearing, the Landlord confirmed that rent was subsequently paid in full and that she does not wish to enforce the First 10 Day Notice.

However, the Landlord issued a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 29, 2019 (the "Second 10 Day Notice"). The Second 10 Day Notice was issued in relation to rent that was due on January 28, 2019. The Tenant's amendment confirms receipt of the Second 10 Day Notice on February 1, 2019. At that time, rent in the amount of \$1,600.00 was outstanding. According to the Landlord, the rent payment was received late on February 23, 2019, which was applied to rent due on January 28, 2019. The Landlord testified that no further rent payments have been

received and the payment of \$800.00, which was due on February 28, 2019, remains outstanding.

The Tenant provided testimony with respect to the payment of rent. He advised that he purchased a fridge at the beginning of the tenancy, and that there was an agreement that the amount paid could be deducted from rent at his discretion “when things were slow” for him. The Tenant did not submit documentary evidence of such an agreement, although a receipt that included the purchase of a fridge, dated September 22, 2017, was submitted into evidence.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

In this case, I find that rent was not paid when due on January 28, 2019 (although it was subsequently paid on February 23, 2019), and that rent was not paid when due on February 28, 2019. I am satisfied that rent in the amount of \$800.00 remains outstanding. Further, I find there is insufficient evidence before me to find that the parties entered into an agreement that permitted the Tenant to withhold rent at his discretion to compensate him for the fridge purchase. Indeed, the Tenant’s reliance on this alleged agreement supports my conclusion that rent was not paid when due.

In light of the above, I find that the Tenant’s Application to cancel the Second 10 Day Notice is dismissed. When a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the Second 10 Day Notice, a copy of which was submitted into evidence, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

Subject to the exercise of my discretion under Rule of Procedure 2.3, described under *Preliminary and Procedural Matters*, above, the Tenant's Application to cancel the Second 10 Day Notice is dismissed, without leave to reapply.

Pursuant to section 55(1) of the *Act*, the Landlord is granted an order of possession, which will be 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: March 8, 2019

Residential Tenancy Branch