



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, LRE, OLC OPT, CNR, MNDC, FF

Introduction

The tenant Mr. H.C. brings two applications. The first, made March 1, 2019 seeks an order prohibiting the landlord from deactivating an entry fob, suspending or regulating the landlord's right of entry, extending the tenancy beyond the end of its fixed term and for a monetary award for the landlord's illegal entry and fob change in early January 2019.

The tenant's second application, made March 4, 2019, seeks an order for access for the tenant and his guests and to challenge a ten day Notice to End Tenancy for unpaid rent dated March 2, 2019.

This dispute has been given a priority hearing date because of the challenge to a Notice to end the tenancy. It is the central issue. The other matters are considered to be unrelated claims. Indeed, both the landlord and the tenant may view each of them in a very different light as a result of my determination about the validity of the ten day Notice and the continuation of this tenancy. Rule 2.3 of the Rules of Procedure provides:

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As stated at hearing, I exercise my discretion to sever the tenant's claims other than the claim to cancel the ten day Notice. I dismiss those other claims and grant the tenant leave to re-apply.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing

Issue(s) to be Decided

Is the ten day Notice to End Tenancy dated March 2, 2019 a valid Notice, resulting in the ending of this tenancy?

Background and Evidence

The rental unit is a one bedroom condominium apartment. The tenant's sister Ms. M.C., acting on the tenant's behalf, secured the apartment for him by signing a tenancy agreement for a tenancy starting January 1, 2019 for a fixed, three month term at a monthly rent of \$1600.00.

The agreement provided that the tenant must vacate the rental unit at the end of the term on March 31. A security deposit of \$800.00 was paid, which the landlord still holds.

The early days of the tenancy were confused. The tenant started moving in on or around January 2 but due to the death of his father, felt he could not continue the tenancy. He emailed the landlord his notice that he would be vacating the apartment at the end of the day January 3, 2019. There was discussion about meeting for a move-out condition inspection and about return of the security deposit.

The landlord attended at the end of the day January 3 but the tenant was not there. The parties may have been confused about the agreed time. The landlord used his key to enter and had the building concierge cancel the front door entry fob(s).

At about the same time the landlord indicated to the tenant that he would owe him rent for the fixed term and that they should both try to find a replacement tenant to mitigate the tenant's loss. In that light, the tenant determined that it would be most practical for him to stay in the apartment. He and the landlord agreed to revive or continue with the tenancy. The tenant was added to the tenancy agreement his sister had negotiated and he signed it.

Things seemed to continue peacefully after that. January rent was paid. February rent was paid. However, as admitted by the tenant, only \$800.00 of the \$1600.00 of March rent was paid, leaving a balance due of \$800.00.

The landlord contacted the tenant on March 1 demanding the balance. The tenant issued his first application on the same day, seeking a claimed amount of \$10,000.00 for what he claims to have been a wrongful lockout and a wrongful entry back on January 3, 2019.

On March 2, the landlord issued the ten day Notice to End Tenancy claims the tenant failed to pay \$800.00 of the rent due March 1, 2019. On March 4 the tenant brought his second application, seeking to cancel that Notice.

The tenant argues that he only owed \$800.00 for March rent because back at the start of January, when the landlord wrongly entered, the landlord stole \$400.00 from a dresser drawer where the tenant had put it. He testifies that back in January when he and the landlord agreed to continue with the tenancy agreement, they verbally agreed that the tenant would only pay \$800.00 for the "last month's rent" as compensation for the theft and for the tenant's inconvenience caused by the landlord having his building entry fob cancelled for a day.

The landlord denies any such agreement or to reduce the March rent.

Analysis

At hearing both attending parties felt a need to dwell on the circumstances that occurred over the first few days of January. In my view, the central question is not whether the landlord breached the tenancy agreement or the law, entitling the tenant to compensation, which I doubt. Rather, the central question is whether or not the parties had an agreement to reduce the March rent by \$800.00.

It is my determination that the parties did not have an agreement entitling the tenant to reduce the March rent by \$800.00. The onus of proving such an agreement is on he who alleges it; the tenant in this case, and he has not satisfied that burden on a balance of probabilities.

Indeed, the evidence strongly mitigates against such a finding. The alleged agreement was not reduced to writing. No witnesses to the agreement were offered. There is no

mention of the \$800.00 in any of the varied correspondence: emails and texts, between the parties. When the landlord demanded the \$800.00 balance of March rent, the tenant did not raise the alleged agreement. When the tenant made his application on March 1, seeking \$10,000.00 for the early January incidents there was no mention of the agreement. When the tenant applied to cancel the ten day Notice, there was only a reference to "a verbal agreement" in the material supplied in support of the application. In all the correspondence adduced during this hearing there no mention of any theft by the landlord.

Conclusion

The tenant has not proved he had an agreement to pay anything less than the \$1600.00 rent due March 1, 2019. As a result, the ten day Notice is a valid Notice and the tenant's application to cancel it is dismissed.

Pursuant to s. 55 of the *Residential Tenancy Act* the landlord must be granted an order of possession. The tenant has continued to occupy the premises even after the end of the fixed term and has paid no occupation rent. In these circumstances the landlord will have an immediate order, requiring both tenants listed on the tenancy agreement to vacate the rental unit within 48 hours after either of them is served with the order or within 72 hours after a copy of the order is attached to the door to the premises, whichever expires first.

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: April 16, 2019

Residential Tenancy Branch