



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, PSF, OLC, LRE, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; for an Order requiring the Landlord to provide services or facilities; and to recover the fee for filing this Application for Dispute Resolution.

The Tenants and the Landlord agree that on August 16, 2019 the Dispute Resolution Package was personally served to the Landlord.

On July 22, 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings. The Tenants were advised that they can speak about this evidence during the hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. I find that the Tenants

have identified several issues on the Application for Dispute Resolution which are not sufficiently related to be determined during these proceedings.

I have limited the issues in dispute at these proceedings to issues that I believe relate to the peaceful possession of the rental unit, which includes the Tenants' application to set aside the Notice to End Tenancy; the Order suspending or setting conditions on the Landlord's right to enter the rental unit; the need to provide a receipt for rent that is paid in cash; and an affirmation that rent is not due until the first day of each month. I will also consider the Tenants' application to recover the fee for filing this Application for Dispute Resolution.

The Tenants' application for repairs and maintenance is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

Is there a need to issue an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

When is the Landlord entitled to collect rent?

Is the Landlord required to provide a rent receipt for rent when it is paid in cash?

Background and Evidence

The Landlord and the Tenants agree that Landlord served the Tenants with a document that is titled "Notice to Quit". The male Tenant read out this document during the hearing and the Landlord agreed that the Tenant read the document correctly.

The "Notice to Quit" declares that the Tenants must vacate the rental unit by August 08, 2019 because of damage to the rental unit. The Tenants have applied to dispute this "Notice to Quit".

The Tenants were unable to provide any reason for me to suspend or set conditions on the Landlord's right to enter the rental unit.

The Tenants are seeking an Order requiring the Landlord to provide a rent receipt whenever they pay their rent in cash. The Landlord stated that the Tenants have never asked for a rent receipt.

The Tenants are seeking an Order requiring the Landlord to not ask for rent prior to the first day of each month. The parties agree that rent is due on the first day of each

month. The male Tenant stated that the Landlord has previously asked for the rent prior to the first day of the month. The Landlord stated that he has previously asked that the rent be paid on the morning of the first day of each month.

Analysis

Section 47(1)(g) of the *Act* permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time.

Section 47(3) of the *Act* stipulates that a notice to end tenancy that is served pursuant to section 47(1)(g) of the *Act* must comply with section 52 of the *Act*. I find that the “Notice to Quit” that was served to the Tenants on August 08, 2019, which the Landlord is relying upon to end the tenancy, does not comply with section 52(e) of the *Act*, because it is not in the approved form.

Section 10(1) of the *Act* authorizes the director to approve forms for the purposes of this *Act*. The approved form for ending this tenancy pursuant to section 47(3) of the *Act* is RTB-33.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used. I find that the “Notice to Quit” that was served to the Tenants on August 08, 2019 is not a valid notice to end tenancy because it misses important information that significantly affects its substance. In particular, the form does not inform the Tenants of their right to dispute the notice to end tenancy nor does it inform them of the consequences of failing to dispute it within ten days.

As the document served to the Tenants on August 08, 2019 does not comply with section 52(e) of the *Act*, I find that it does not serve to end the tenancy pursuant to section 47(3) of the *Act*. I therefore grant the Tenants’ application to set aside this notice to end tenancy.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

As the Tenants were unable to provide any reason for me to suspend or set conditions on the Landlord's right to enter the rental unit, I dismiss their application for such an Order. The Landlord remains obligated to comply with section 29(1) of the *Act* whenever he wants to access the rental unit.

Section 26(2) of the *Act* requires a landlord to provide a tenant with a receipt when rent is paid in cash. Regardless of whether or not the Tenants request a receipt, I hereby Order the Landlord to provide them with a receipt whenever their rent is paid in cash.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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. As the parties agree that rent is due on the first day of each month, I find that the rent must be paid by midnight on the first day of each month. I dismiss the Tenants' application for an Order preventing the Landlord from asking for the rent earlier than midnight, as I find that such an Order might preclude a reasonable conversation about when the parties will meet for the purpose of paying the rent.

I find that the Application for Dispute Resolution has merit and that the Tenants are therefore entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenants' application to set aside the notice to end tenancy that was served to them on August 08, 2019 is granted. This tenancy shall continue until it is ended in accordance with the *Act*.

I hereby authorize the Tenants to deduct \$100.00 from their next rent payment, as compensation for the fee paid to file this Application for Dispute Resolution.

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: September 19, 2019

Residential Tenancy Branch