



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, OPC, MNR, OLC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession, based on a One Month Notice to End Tenancy for Cause, (the "Notice") issued on July 12, 2019;
2. For an order of possession, based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
3. For a monetary order for unpaid rent;
4. To keep all or part of the security deposit; and
5. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
2. To have the landlord comply with the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

This hearing commenced on September 26, 2019 at 9:30am. The parties agreed that an additional hearing was scheduled for the same date at 11:00am and that file should be joined to be heard at 9:30am. I find it appropriate to join the file that is scheduled at 11:00am to this hearing, as it is directly related to the ending of the tenancy, which is the subject of this hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary for unpaid rent?
Should the notice to end tenancy be cancelled?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenant acknowledged that they were served with the Notice, sent by registered mail on July 12, 2019 and received on July 15, 2019.

The Notice explains the tenant had ten days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice.

The tenant testified that they thought they were disputing the Notice and that they have received multiple notice to end the tenancy, including unpaid rent. The tenant stated that it simply is a technicality that they did not amend their application to include the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this matter the tenant was served with the Notice on July 15, 2019. Even if I accepted the tenant's testimony that they thought that was the subject of the hearing; however, their application filed on July 29, 2019, was to dispute a notice to end tenancy for unpaid rent received on July 26, 2019.

Further, even if I accept the testimony of the tenant that it was their intent to dispute the Notice, I find the tenant did not apply within the statutory time limit as their last day to dispute the Notice was July 25, 2019. The tenant's application was filed on July 29, 2019. While the tenant believes this is a technicality, I find that is not the case.

The Act is what guides the requirement of both parties and both parties are equally responsible to ensure they comply with the Act, this includes that statutory requirement,

as in this case, the tenant did not dispute the Notice, nor did they make any application within the statutory time limits.

I find the tenant did not apply to dispute the Notice and therefore conclusively presumed under section 46 (5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

In this case the Notice, complies with section 52 of the Act, although the Notice states the effective vacancy date of August 13, 2019, I find this is earlier than the Act allows. The Act automatically corrects that date to the earliest date the Act allows, which is August 31, 2019. I find the tenancy legally ended on August 31, 2019 and the tenant is now overholding the rental unit.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have found the tenancy legally ended based on the Notice, I find it not necessary to consider the notice to end tenancy for unpaid rent.

The landlord's application seeks a monetary order for unpaid rent. The tenant has paid rent up to September 25, 2019, as that is the day rent is due. I find the landlord's request for rent for September 26, 2019 to October 25, 2019, premature as the landlord has a duty to mitigate their loss, in accordance with the Act. Therefore, I decline to hear the issue of unpaid rent for the above period with leave to reapply.

I find that the landlord has established a total monetary claim of \$100.00 to recover the filing fee from the tenant for this application. I order that the landlord retain the amount of \$100.00 from the tenant's security deposit in full satisfaction of the claim.

Conclusion

The tenant failed to dispute the Notice. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep a portion of the security deposit in full satisfaction of the claim.

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 27, 2019

Residential Tenancy Branch

Amended on October 10, 2019