



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR FFL

Introduction, Preliminary, and Procedural Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

This dispute began as an application via the ex-parte Direct Request process and in a decision of October 21, 2019, an adjudicator with the Residential Tenancy Branch (RTB), issued the landlord an order of possession of the rental unit effective two days after it was served on the tenant. The adjudicator also dismissed the landlord's request for a monetary order, with leave to reapply. I note that the adjudicator had excluded tenant SK from consideration in her decision as SK had not signed the tenancy agreement.

The tenant filed an application for review consideration based upon their assertion that the decision of October 21, 2019, was obtained by fraud. The tenant claimed and submitted evidence that rent for October 2019 had been paid.

In a decision of November 14, 2019, an arbitrator granted the tenant's application for review consideration and ordered a new hearing. This was the hearing based upon that decision.

At this hearing, the landlord was present at the start and said the tenants had vacated the rental unit the week prior to the hearing. Shortly thereafter, both tenants called into the hearing and I heard testimony from all parties.

The tenants disagreed that they vacated the rental unit and instead, said they were escorted out of the rental unit by a bailiff.

It was discovered through testimony that the landlord here was actually a tenant of the owner, who in turn leased the premises to these tenants. I note that the written tenancy agreement in this matter did not mention that this was a sub-tenancy agreement.

The testimony showed that the owner of the premises received an order of possession of the rental unit from the RTB in a separate dispute resolution matter, against the landlord here, his tenant. It was pursuant to that order of possession that the tenants were removed by the bailiff.

The landlord said that he was evicted as he was unable to pay the owner monthly rent since the tenants did not pay their rent to him.

The landlord further disclosed that he had another dispute resolution hearing upcoming against these tenants. Upon my inquiry, the landlord said that hearing will deal with his claim for unpaid rent.

Analysis and Conclusion

I find that this tenancy has now ended by virtue of the owner of the property being granted an order of possession which has now been enforced by a bailiff.

Therefore, the matter of the landlord's request for an order of possession of the rental unit is now moot.

The Residential Tenancy Act states that on a review hearing I must confirm, vary, or set aside the original decision on the landlord's application under the Direct Request process, here dated October 21, 2019. In this case, as it was not necessary to hear evidence on the landlord's request for an order of possession or the tenant's evidence that they had paid rent for the month of October 2019, I find it appropriate to set aside the decision and order of October 21, 2019.

I note that this decision makes no finding on the merits of the landlord's 10 Day Notice for Unpaid Rent or Utilities or the tenant's assertion that rent for October 2019 was paid.

I further note that as the landlord said he had a hearing scheduled to deal with his claim for unpaid rent, I did not find it necessary to address that issue here. Further the arbitrator granting the review hearing did not specifically state that the issue of unpaid rent, dismissed by the adjudicator, should be reviewed.

For the reasons set out above, I set aside the Decision and Order of October 21, 2019. That Decision and Order of October 21, 2019, are of no force or effect.

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 9, 2020

Residential Tenancy Branch