



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNMT, MNDL, FF

Introduction

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

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause;
2. For a monetary order for money owed; and
3. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The landlord amended their application on February 13, 2020 for the following order

1. To recover unpaid rent.

In this case, the landlord sent the amended application by registered mail on February 16, 2020, which the Canada post history shows the package was returned unclaimed. I find the tenant was served in accordance with the Act as party cannot refuse or neglect to pickup the package that was sent to them in accordance with the Act.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Is the tenant entitled to a monetary order?

Background and Evidence

The parties agreed they were in a marital relationship which had ended. The parties agreed that the tenant moved into the rental unit in January 2017, to assist with the help of their disabled adult children. Rent was \$700.00 and was increased during the tenancy. No security deposit was paid.

Should the Notice be cancelled

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on February 10, 2020, as the Notice has an effective date earlier than the Act allows, I find the date automatically correction to February 29, 2020.

The reason stated in the Notice was that the tenant has:

- Repeated late payment of rent;
- Seriously jeopardized the health or safety or law right of another occupant or the landlord; and
- Assigned or sublet the rental unit without the landlord's written consent.

The landlord testified that the tenant has been repeatedly late paying rent. The landlord stated that they received rent of the following dates in 2019:

- January paid in two payment; January 9, \$1,000.00 was received and January 24, 2019 the balance of \$300.00 was paid;
- March rent was paid on the 18th;
- April rent was paid on April 4th;

- June rent was paid on June 3rd;
- July rent was paid on July 2nd;
- August rent was paid on August 2nd;
- September rent was paid on September 6th;
- November rent was paid on November 4th;
- December rent was paid on December 4th; and
- January, February and March rent was not paid.

Filed in evidence is a detail list of rent payments received.

The tenant testified that they have been late paying rent on several occasion; however, they did not go through their bank statements to determine which dates. The tenant stated they sent the rent by etranfer and the landlord could have accepted the etransfer on any date. The tenant stated they have not gone through their own records to show when their rent was sent.

The tenant testified that they notified the landlord each time they were going to be late, which was agreed upon. The tenant stated that they never received any warning about late payment of rent.

The tenant testified that they have not paid any rent for January, February or March as the landlord increased the rent illegally and they are entitled to deduct the overpayment from the rent.

The landlord stated they never agreed to waiving their rights under the Act to end the tenancy.

Tenant's application

The tenant testified that rent was always to be \$700.00 per month. The tenant stated that the rent was increase to \$1,000.00 in July 2017, and again rent was increased to \$1,300.00 in January 2019. The tenant seeks to recover the overpayment of rent in the amount of \$10,900.00.

The landlord testified that the rent was \$700.00 per month at the start of the tenancy as they had asked their ex-husband (the tenant) to move into the rental unit to be closer to their adult children. The landlord stated that rent was increase to \$1,000.00 by agreement as her ex-husband telephoned her telling her that he could now afford to pay

more rent as their financial situation was stabled. The landlord stated that her ex-husband paid the rent of \$1,000.00 per month from July 2017 to December 2018.

The landlord testified that the rent was further increase to \$1,300.00 by agreement starting January 2019, as the tenant was acting as her agent for another rental unit, which was sold in October 2019. The landlord stated that they agreed at that time that the rent would be increase to \$1,300.00; however, it would not start until January 2019. The landlord stated this only became an issue when she wanted her ex-husband to vacate the property and was served with the Notice.

Landlord's application for unpaid rent

The parties agreed that no rent was given to the landlord for January, February and March 2019. The tenant indicated they did not pay due to an illegal rent increase.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Should the Notice be cancelled

I accept the evidence of the landlord that rent was late for multiple months as show above. This is supported by the tenant's acknowledgment that they were late on several occasion; however, the tenant was unsure of those specific months.

Further, the tenant alleged there was no evidence of when the etransfers were sent. I find it was the tenant's responsible to present evidence, such a copy of their own bank statements, or etransfers to prove the landlord's dates were wrong as the tenant had the landlord's documentary evidence prior to the hearing and had sufficient time to obtain those documents.

Furthermore, the tenant submitted that they should have received a warning letter for the late payments of rent. I find there is no requirement under the Act that the landlord is required to issue a warning letter for late payment of rent. Under section 26 of the Act, a tenant must pay rent when due.

As I have accepted the evidence of the landlord that the tenant was late paying rent on more than three occasions. I find the tenant has been repeatedly late paying rent. I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on February 29, 2020. As, I have found the tenancy legally ended based on late payment of rent, I find I do not need to consider the balance of the reasons stated in the Notice.

Based on the above, I dismiss the tenant's application to cancel the Notice and I grant the landlord an order of possession.

As the tenancy legally ended on the corrected effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. A copy of this order must be served upon the tenant.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Tenant's application

I accept the increase in rent was not done in writing; however, I do not accept the tenant's evidence that this was not agreed upon. This was an informal agreement between to parties which were divorced.

The tenant sent an email to the landlord date December 30, 2019, it states as follow,

"You owe me \$300.00 a month x 14. You can only give me a notice of eviction after you sell! 2months and 1 month is free. So I won't be paying rent ... or you

can give me 4200. Keep fucking with me and we can go back to when rent was \$700.”

[Reproduced as written.]

The first rent increase started in July of 2017 and the tenant continue to pay that increase until December 2018, which was 17 months. I find the tenant’s action of the above email and supporting text messages, clearly support the tenant only made this application in retaliation. I accept the landlord’s evidence that the rent increase was presented by the tenant and the landlord had the right to rely upon the actions of the tenant. Therefore, I dismiss this portion of the tenant’s claim.

The second rent increased commenced on January 1, 2019, after the tenant’s role as acting as agent for the landlord ceased due to the sale of that property. I accept the evidence of the landlord that this was an agreed upon rent increase as the tenant was no longer acting as agent. Further, I find the landlord had the right to rely upon the action of the tenants when they willfully paid the increase of rent from January 1, 2019 to December 2019, which was 12 months. I find the tenant’s application was made in retaliation, simply because the landlord wanted the tenant to vacate the premise. Therefore, I dismiss this portion of the tenant’s claim.

As the tenant’s application was dismissed, and I find it was simply in retaliation of his ex-wife, the landlord, I decline to award the cost of the filing fee.

Landlord’s application

Unpaid Rent

Although I stated the issue of unpaid rent was not properly before at the hearing. I have reviewed the file after the hearing. The landlord had filed an amendment to their application, which was sent to the tenant by registered mail. The tenant did not pick up the package. Refusal to accept a package does not override the service provision under the Act. I find the tenant was deemed served with the landlord’s amended application. Therefore, I have considered this portion of the landlord’s claim.

At the hearing, the tenant admitted that they have not paid rent for January, February and March 2020. As I have dismissed the tenant’s monetary claim based on an illegal rent increase, I find the tenant has breached section 26 of the Act when they failed to pay rent for the above said months. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$3,900.00**.

I find that the landlord has established a total monetary claim of **\$4,000.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord's application for an order of possession and a monetary order is granted.

The tenant's application for monetary compensation is dismissed. The landlord's application for a monetary order for unpaid rent is granted

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 10, 2020

Residential Tenancy Branch