



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
2. To suspend or set conditions on the landlord's right to enter the rental unit; and
3. To have the landlord comply 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.

Preliminary and Procedure matters

Tenants' application

At the outset I had to determine if the primary applicant on the tenants' applicant RS is a tenant under the tenancy agreement. I have reviewed the reviewed the signed tenancy agreement. Although RS is listed on the covering page of the tenancy

agreement RS did not sign the agreement when it entered into. Therefore, I find RS is not a tenant under this agreement and merely an occupant with no legal rights or obligations under the Act. Therefore, I have removed RS from the style of cause.

I am not satisfied that RS had the consent of the tenant TH to make this application as they have had no communication since separating. Therefore, I decline to hear the tenants' application. However, RS was allowed to remain in the hearing and provide testimony that is relevant to this matter.

Landlord's application

The landlord attended the hearing. As the tenant TH did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in two methods on November 27, 2020.

- By serving an adult person RS who resides in the rental unit; and
- By serving the tenant at an address provide by TH, which TH acknowledged it was received.

Based on the above, I find the tenant was served at the address provided by TH on November 27, 2020.

I also find it appropriate to allow the landlord's application to be amended, pursuant to section 62 of the Act, for subsequent unpaid rent, as this is the most basic term of all tenancy agreement.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to an order of possession?

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

Background and Evidence

The parties entered into a fixed term tenancy that began on December 15, 2019 and was to expire on December 15, 2020. Rent in the amount of \$1,000.00 was payable on the 15th day of each month. A security deposit of \$500.00 and a pet damage deposit of \$300.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The landlord testified that they served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, on an adult person RS who was living in the rental unit. RS acknowledged it was received and has been living in the premise since the tenancy commenced. File in evidence is a copy of the Notice, issue on November 2, 2020.

The landlord testified that they also informed TH of the service of the document; however, TH responded by text "what do you expect of me I was kicked out by her". File in evidence is an email.

The landlord testified that the tenant had failed to pay \$100.00 of September 2020, rent and rent for October due on the 15 was not paid. The landlord stated no subsequent was received by the tenant. The landlord seeks to recover unpaid rent in the amount of \$4,100.00.

RS the occupant testified that their partner left her sometime in August and came back in late September to pickup his belongings. RS stated because TH would not give the landlord written notice to end the fixed term agreement they were unable to enter into a new tenancy agreement with the landlord. RS stated that during the tenancy they made some payments towards the rent.

The landlord and RS testified that they were both in a difficult position as TH did not provide the proper notice to end the fixed term agreement and TH was entitled to return to the rental unit under that agreement.

The landlord testified that they sent TH by email on what was required to end the tenancy; however, it was the tenant did not provide that notice. Filed in evidence is an email from the landlord to the tenant requesting the required notice to end the tenancy and the tenant's response.

The email thread which starts on October 13, 2020 and continues to November 13, 2020, in part reads:

Landlord "...you stated you would love to move back into your place, is it your intention to return? If not you must give written notice to end your tenancy..."

[Reproduced as written]

Landlord " Hi TH, This rental is in your name only making you responsible. Please call me and I can explain the details"

[Reproduced as written]

Tenant "Well then kick her out and **I'll gladly move back into my place ...**"

[My Emphasis Added]

Analysis

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

In this case, I accept that RS, made some payment towards the rent; however, that does not automatically make them a tenant. There is a signed tenancy agreement with TH and the landlord in this case . The landlord is entitled to accept rent for any source on behalf of the tenant. Only the landlord and TH can change that agreement in writing.

In this case, I accept the evidence of the landlord that they could not create a new tenancy agreement with RS, until the tenant LH ended the fixed term agreement.

When a relationship breaks down such as in this case, it is not the landlord responsibility to "kick her out" as stated in the tenant's email, as this is a private relationship issue.

I find it was the tenant's reasonability to either end their tenancy in accordance with the Act and both TH and RS would be required vacate the premise or alternatively have RS removed from the premise as they are not the tenant under the tenancy agreement.

Based on the above, I find TH did not end their tenancy, even after they were asked to do so by the landlord. In fact, TH stated they would "**gladly move back into my place**" if RS left, in an email dated November 14, 2020. I find TH is responsible for the unpaid

rent under their tenancy agreement that has incurred since October 2020 and all subsequent rent. Therefore, I find the landlord is entitled to a monetary order for unpaid rent for September \$100.00, October, November, December 2020 and January 2021, in the total amount of **\$4,100.00**.

I find that the landlord has established a total monetary claim of **\$4,200.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$500.00** and pet damage deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,400.00**.

This order may be filed in the Provincial Court (Small Claims) 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 tenant failed to pay the rent, 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.

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.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order.

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 28, 2020

Residential Tenancy Branch