



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RP, RR, LRE, PSF, AAT, MNDCT, OPR-DR, OPRM-DR, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for repairs to the unit - Section 32;
4. An Order for a rent reduction - Section 65;
5. An Order restricting the Landlord’s entry - Section 70;
6. An Order for the provision of services and facilities - Section 65;
7. An Order allowing access to the unit - Section 70; and
8. A Monetary Order for compensation or loss - Section 67.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that it did not receive any application for dispute resolution from the Landlord. The Landlord states that it sent the application to the Tenant by registered mail on an unknown date and provides a tracking number. This evidence indicates that the mail associated to this tracking number was sent March 10, 2021 to an address in a different city. The Landlord states that this does not make sense however the Landlord has no other evidence to support the service of its application to the Tenant.

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. Given the Tenant's evidence that the Landlord's application for dispute resolution was not given to the Tenant and as the Landlord has no evidence to support that the application was given to the Tenant I find on a balance of probabilities that the Landlord has not substantiated that the Tenant was served with its application. I therefore dismiss the Landlord's claim for an order of possession and the filing fee without leave to reapply. The Landlord's claim for unpaid rent is dismissed with leave to reapply.

The Tenant confirms that its claim for compensation is related to matters that occurred during the tenancy.

Rule 2.3 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claims in relation to the Landlord's compliance, repairs, rent reduction, landlord's entry, services and facilities, access to the unit for the Tenant's guests and compensation are not related to the matter of whether the tenancy will end I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy effective for ending the tenancy?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on April 1, 2020. Rent of \$995.00 is payable on the first day of each month. The Tenant failed to pay rent for February 2021. The Tenant received a 10-day notice to end tenancy for unpaid rent dated February 2, 2021 (the "Notice").

The Landlord states that on February 2, 2021 the Tenant was served with the Notice by placing the Notice in the Tenant's mailbox on February 2, 2021. The Landlord states that it cannot say whether the Notice sets out an effective date. The Landlord states that a second 10-day notice to end tenancy for unpaid rent was subsequently given to the Tenant to ensure a correction of any deficiencies with the Notice.

The Tenant states that on February 2, 2021 the Tenant could not access the unit as the locks had been changed. The Tenant states that the Landlord was spoken with immediately and the Landlord confirmed that the locks had been changed by the Landlord. The Tenant states that the Landlord was informed on this date that the Tenant had the rent to give to the Landlord and that the Landlord refused the rent. The Tenant states that the Landlord did not give the Tenant access to the unit until February 5, 2021. The Tenant states that on this date the Tenant found the Notice and that it did not set out an effective date of the Notice. The Tenant states that the Landlord then gave the Tenant the second 10-day notice to end tenancy for unpaid rent. The Tenant states that the Landlord was again on February 5, 2021 offered the outstanding rent, but the Landlord refused. The Tenant states that they made its application, including completed information for the fee payable, to the RTB on February 10, 2021 shortly before the offices closed and that they were informed by the RTB that the application would be processed the next day.

The Landlord states that the Tenant has not paid any rent since the Notice. The Tenant states that rents were not initially paid due to the Landlord failing to comply with the Act

or tenancy agreement. The Tenant states that it thereafter has made repeated attempts to pay the Landlord the outstanding rent but that the Landlord has refused to communicate with the Tenant. The Tenant states that it did not want to place any cash payments or cheques under the Landlord's door as the Tenant believed that the Landlord would deny receiving the monies. The Landlord states that at no time did the Tenant ever try to pay any of the outstanding rents and that at no time did the Tenant ever leave a voice message offering to pay the rents.

The Landlord states that the Tenant was seen moving its belongings out of the unit prior to the lock change. The Tenant states that it has not moved any of its belongings out of the unit.

The Tenant states that while it has the key to access the unit it no longer has a working key for the building and has to wait outside the door before obtaining entry from another person entering the building. The Landlord confirms that the Strata changed the building door locks about a month ago and that while the Landlord obtained a key for the building entry it did not obtain a key or provide the Tenant with a key to the building entry.

Analysis

Section 46(4) of the Act provides that within 5 days after receiving a notice for unpaid rent, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Given the Tenant's undisputed evidence that the Notice without the effective date was found in the unit on February 5, 2021 and their evidence that their application for dispute resolution along with its filing fee information was given to the RTB on February 10, 2021, I find that the Tenant made their application within the time allowed.

Section 52(c) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must state the effective date of the notice. Section 68(1) of the Act provides that if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

RTB Guideline #11 sets out that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

It was determined during the hearing that the Notice could be amended to include the effective move-out date however after greater consideration of the undisputed evidence that the Landlord without right changed the locks to the unit on the same date that the Notice was placed in the Tenant's mailbox, that the Landlord has continued to withhold keys for the main entry, and that the Notice was found by the Tenant on the counter inside the unit on February 5, 2021 without evidence of the Landlord's right of entry, I find that in the circumstances it would not be reasonable to amend the Notice. As the Notice is missing the effective move-out date I find that the Notice is not effective to end the tenancy and is therefore cancelled. As there is no evidence that the Tenant consented to the withdrawal of the Notice, I find that the subsequent service of the second notice to end tenancy setting out an effective date does not cancel or amend the Notice and in itself is therefore not effective to change or amend the Notice. The tenancy continues. The Landlord remains at liberty to serve another 10-day notice to end tenancy for unpaid rent if the Tenant does not pay the rents.

Section 31(1) of the Act provides that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. Given the

undisputed evidence that the Tenant does not have an entry key to the building, I order the Landlord to forthwith and immediately provide the Tenant with such a key.

Conclusion

The Landlord's claims for an order of possession and recovery of the filing fee is dismissed. The Landlord's claim for unpaid rent is dismissed with leave to reapply.

The Notice is not effective to end the tenancy and is cancelled. The tenancy continues.

I **Order** the Landlord to immediately provide the Tenant with a key to the building.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 18, 2021

Residential Tenancy Branch