



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNL, OLC, FFT, CNR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the tenant on August 6, 2021, to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"), for compensation for monetary loss or other money owed, to have the landlord comply with the Act and to recover the cost of the filing fee.

On October 25, 2021 the tenant filed an amendment to their Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), issued on October 24, 2021.

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. Both parties confirmed under affirmation they were not recording the hearing.

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

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and the 2 Month Notice. The balance of the tenant's application is dismissed, with leave to reapply.

Issues to be Decided

Should the 10 Day Notice be cancelled?

Should the 2 Month Notice be cancelled?

Background and Evidence

The tenancy began on July 1, 2019. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenant.

The tenant acknowledge in their amended application that they received the 10 Day Notice on October 24, 2021.

The tenant testified that they did not pay rent for August and September because the landlord had offered them two-month compensation if they vacated the rental unit by September 30, 2021. The tenant stated they have not paid any rent for October, November or December 2021 because the landlord sold the property, and the rent should go to the new owners. Filed in evidence are Contract of Purchase and Sale (the "Contract")

The tenant testified that they have been talking to the new potential purchaser and they indicated that they can stay when they purchase the property.

The landlord confirmed that they offered the tenant additional compensation if they vacated the property by September 30, 2021. The landlord stated the tenant did not agree and has not vacated the property.

The landlord testified that the sale of the property has not gone through because the purchaser wanted vacant possession. The landlord confirmed they are the owners of the property and the tenant was required to pay them the rent as shown in the 10 Day Notice. The landlord stated that the tenant has been interfering with a potential buyer to have inspections and appraisals done on the property.

The landlord testified that they have no interest in continuing the tenancy and any potential sale would not be effective for a period of time as the potential buyer has not even had the house appraised or obtained financing.

Analysis

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

In this case, I am satisfied that the landlord is still the owner of the property as the property has not been transferred to a new owner and the tenant was obligated to pay the rent to the landlord. Clearly the tenant is aware of this because they have been communicating with the potential buyer.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

*(4) **Within 5 days** after receiving a notice under this section, the tenant may*

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the 10 Day Notice is completed in accordance with the requirements of section 52 of the Act.

Although I accept the landlord offered the tenant two months free rent if they vacated the premises by September 30, 2021, in accordance with the 2 Month Notice; however, the tenant did not accept the 2 Month Notice as they disputed the 2 Month Notice on

August 6, 2021 and did not vacate on September 30, 2021. Therefore, this offer was no longer valid.

While I accept the tenant had the right to dispute the 2 Month Notice and the merits of the 2 Month Notice would be considered by the Arbitrator whether or not it was issued for the reason stated and in “good faith”. However, until the Arbitrator made that determination the tenant had no authority under the Act to withhold rent, especially if they were wanting their tenancy to continue.

However, before the merits of the 2 Month Notice could be heard, the tenant breached section 26 of the Act, when they failed to pay rent for August, September and October 2021, and was served with the 10 Day Notice on October 24, 2021. The tenant had five days to pay the outstanding rent to the landlord, which they did not do and has failed to pay all subsequent rent for November and December 2021. I find the tenant breached the Act when they failed to pay rent due under the terms of their tenancy agreement in the total amount of **\$10,000.00**. Therefore, I find the 10 Day Notice is valid and remains in full force and effect. I find the tenancy legally ended on November 4, 2021, which was the effective date of the 10 Day Notice. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

In light of the above, I find the landlord is entitled to the following Orders,

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.

I find the landlord is entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$10,000.00**. I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$9,000.00**. 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 ended the tenancy based on the 10 Day Notice, I find I do not need to consider the merits of the 2 Month Notice. Therefore, I find it appropriate to cancel the 2 Month Notice and it has no force or effect. I decline to award the cost of the filing fee.

At the conclusion of the hearing the landlord agreed not to enforce the 2-day order of possession on the tenant until December 31, 2021, **on the following terms**, which the tenant agreed.

1. The tenant will pay the landlord the amount of \$6,000.00 today, December 10, 2021, no later than 7pm by etransfer;
2. The tenant will pay the balance due of \$3,000.00 no later than December 17, 2021 by 7pm; and
3. The tenant will not interfere with the potential buyer conducting inspections, or have the premises appraised.

Should the tenant fail to comply, with term 1, 2 or 3, the landlord is entitled to enforce the 2-day order of possession.

Should the tenant make the above payments as agreed, I order the landlord to deduct these amounts from the monetary order I have granted.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed. The Two Month Notice is cancelled and has no force or effect. The tenant is not entitled to the cost of the filing fee. The landlord is granted an order of possession and a monetary order for the unpaid rent.

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: December 10, 2021

Residential Tenancy Branch