



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, OPR, MNR, MND, MT, CNL, OLC, LRE, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession following the service of two notices to end tenancy – a ten-day notice for unpaid rent or utilities and a two month notice for landlord's use of property. The landlord also applied for a monetary order for unpaid utilities and the cost of repairs.

The tenant applied to cancel the two-month notice to end tenancy and for more time to do so, to suspend or set conditions on the landlord's right to enter the rental unit and for an order directing the landlord to comply with the *Act*. The tenant also applied for the recovery of the filing fee.

The landlord served the tenant with the notice of hearing but did not serve the tenant with her evidence. Accordingly, the landlord's evidence was not used in the making of this decision. The tenant served her evidence to the landlord by registered mail and filed proof of service.

Both parties were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the notice to end tenancy valid? Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid utilities? Is the tenant in a fixed term tenancy?

Background and Evidence

The tenancy started on June 01, 2020. A tenancy agreement was filed into evidence. The parties agreed that the tenancy was a fixed term tenancy that would end on May 31, 2023. The monthly rent is \$2,000.00 payable on the first of each month and does not include utilities. The landlord lives on the lower level and shares utilities with the tenants who reside on the upper level.

The landlord stated that the tenants stopped paying their share of utilities from October 15, 2022. The tenants stated that the reason for not paying is that the landlord is not mindful of her use of the utilities and has even broken a windowpane which she has not fixed, resulting in higher than normal utility bills. The landlord agreed that she has not served the tenant with a notice to pay utilities.

The landlord testified that on December 14, 2022, she posted two notices to end tenancy on the door of the rental unit. The tenant stated that she received just one notice which is the two-month notice to end tenancy. The tenant did not dispute the notice at first because she became aware that such a notice is not valid during a fixed term tenancy agreement, if the end date is prior to the end date of the fixed term. The tenant stated that later she decided to dispute the notice anyways and that is why she applied for more time to do so.

The relationship between the landlord and tenant deteriorated to the point where the tenant was granted a no contact order against the landlord.

Analysis

The landlord withdrew her claim for the cost of repairs.

The tenant denied having received a 10-day notice and the landlord did not file a copy of the notice into evidence. Therefore, the landlord's application for an order of possession for unpaid rent or utilities is dismissed.

The tenant agreed that she received a two month notice to end tenancy for landlord's use of property.

Section 49.2 (a) states that a landlord may end a tenancy for landlord's use of property by giving notice to end the tenancy effective on a date that must be not earlier than the date specified in a fixed term tenancy agreement, as the end date of the tenancy,

In this case the tenancy agreement is a fixed term agreement with an end date of May 31, 2023. Therefore, the landlord must not end the tenancy prior to this date. Accordingly, the notice to end tenancy dated December 14, 2022, is set aside and is of no force or effect. The landlord's application for an order of possession is dismissed.

The tenant stated that the no contact order granted to her ,will take care of her application to suspend or set conditions on the landlord's right to enter the rental unit and for an order directing the landlord to comply with the *Act*

Since the tenant is successful in her application, I award her the recovery of the filing fee of \$100.00. The tenant may make a onetime deduction of \$100.00 from a future rent.

Conclusion

The notices to end tenancy are set aside. The tenancy will continue. The tenant may recover her filing fee by deducting \$100.00 from rent due on March 01, 2023.

The landlord's application is dismissed in its entirety.

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: February 24, 2023

Residential Tenancy Branch