



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: AS CNC CNR (x 2) LRE FFT (X 3)
OPR-DR MNU-DR MNDCL FFL

Introduction

The Tenant seeks orders cancelling three notices to end tenancy, an order to permit assignment or subletting, an order for restricting the Landlord's right of entry, and three claims to recover their application fees. The Landlord seeks orders of possession and a monetary order, along with a claim to recover their application fee.

Issues

1. Is the Tenant entitled to orders cancelling the three notices to end tenancy?
2. Is the Tenant entitled to an order restricting the Landlord's right of entry?
3. Is the Tenant entitled to an order permitting assignment or subletting?
4. Is the Tenant entitled to recover the three application fees?
5. Is the Landlord entitled to orders of possession?
6. Is the Landlord entitled to compensation?
7. Is the Landlord entitled to recover the application fee?

Evidence and Analysis

In a dispute resolution proceeding before the Residential Tenancy Branch, the applicants must prove their claim on a balance of probabilities (meaning "more likely than not"). I have considered all the parties' evidence and arguments but refer only to what I find relevant to provide context.

The tenancy began in mid-2020. There is a written tenancy agreement in place. Monthly rent is \$2,233.00. Much of this dispute revolves around the Tenant's purported failure to pay utilities bills. In section 3 of the tenancy agreement there is the following notation: "See Clause 11, Utilities Payment." Clause 11 of the tenancy agreement is as follows:

UTILITIES PAYMENT. Utilities that are not included in the rent or are not paid to the landlord are the responsibility of the tenant who must apply for hook up and must maintain current payment of the utility account. The discontinuation of utility service resulting from the tenant's cancellation or failure to maintain payment of his utility account is a breach of a material term of this Agreement. The landlord has the right to end the tenancy if the tenant fails to correct the breach within a reasonable time after receiving written notice to do so. Any utilities charges to be paid to the landlord that remain unpaid more than 30 days after the tenant receives a written demand for payment will be treated as unpaid rent and the landlord may issue a Notice to End Tenancy.

Having reviewed this term of the tenancy agreement, I find that it is inconsistent with the Act (pursuant to section 6(3)(a) of the Act) and possibly unconscionable (pursuant to section 6(3)(b) of the Act). A utility is either provided by a landlord under the tenancy or it is not. If a landlord does not provide a utility, then a tenant is responsible for that utility *outside* the jurisdiction of the Act and the tenancy agreement.

The phrase “service or facility” in section 1 of the Act states that “‘service or facility’ includes any of the following that *are provided or agreed to be provided by the landlord* to the tenant of a rental unit: [...] (b) utilities and related services;” (emphasis added).

The term as it is written in the tenancy agreement, however, uses the wording “Utilities that are not included in the rent or are not paid to the landlord [...]” This is in contradiction to the Act and the contemplated use of the word utilities.

Section 46 of the Act, the section under which two *10 Day Notice to End Tenancy for Unpaid Rent* notices were issued, states at subsection 46(6) “(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice [...]”

But the tenancy agreement in this tenancy does *not* require the Tenant to pay utilities charges to the Landlord. As such, it is my finding that, while the tenant *may* have some obligation to pay the sewer, any such legal obligation falls outside the tenancy agreement and outside the tenancy and thus outside the jurisdiction of the Act.

For this reason, it is my finding that the *10 Day Notice to End Tenancy for Unpaid Rent* (served by registered mail on October 6, 2022, and by other methods of service) and the *10 Day Notice to End Tenancy for Unpaid Rent* (served by registered mail on April 5, 2023, and by other methods of service) ought to be cancelled. They are therefore ordered cancelled effective immediately and are of no legal force or effect. Thus, the Landlord’s application for an order of possession and a monetary order related to the two notices to end tenancy for unpaid rent are dismissed.

In respect of a *One Month Notice to End Tenancy for Cause* served on the Tenant on or about October 6, 2022, the Landlord issued this notice under sections 47(1)(c), 47(1)(d), and 47(1)(h). Having considered the rather light and sparse evidence put forward to

support these reasons for issuing the notice, I am not persuaded that any such grounds are supported by the evidence. While there is obviously a dispute between the Tenant and the Landlord about the Tenant's having roommates in the rental unit, I heard no persuasive argument about how such roommate(s) is an unreasonable number.

Nor was there any persuasive evidence for me to find that any of the grounds under section 47(1)(d) of the Act exist. Indeed, based on the evidence before me, I would in fact find that the Tenant is a tenant who can be trusted and relief upon to take care of the property and not pose any sort of disturbance to others. And, last, for the reasons set out above, I am unable to conclude that the Tenant breached a material term of the tenancy agreement.

Taking into consideration all the relevant oral and documentary evidence before me, it is my finding that the Landlord has not proven, on a balance of probabilities, that there existed any of the grounds on which the *One Month Notice to End Tenancy for Cause* was given. For this reason, I order that the *One Month Notice to End Tenancy for Cause* be cancelled effective immediately. This notice to end tenancy is of no force or effect.

Regarding the Tenant's request for order to permit assignment or sublet, he seems to be advancing arguments about having roommates. There is little by way of argument or submissions that would lead me to find that the Tenant is entitled to an order permitting assignment or sublet. A sublet situation is where the Tenant intends to live elsewhere while having his own tenant occupy the rental unit. An assignment is when the Tenant intends to end the tenancy and basically transfer the tenancy over to a new tenant. Neither of these situations are present in this dispute. For this reason, I dismiss the Tenant's application for orders for assignment or sublet under section 34 of the Act.

Last, while the Tenant does not enjoy having the Landlord's agent attend to the property for inspections, and particularly does not want the agent entering the property without the Tenant present, I see no evidence before me to find that the Landlord or their agent has breached section 29 of the Act. That is, there is insufficient evidence for me to conclude that the Tenant is entitled to an order restricting or otherwise prohibiting the Landlord or their agent from exercising their right to enter the rental unit under section 29 of the Act. This claim for relief is therefore dismissed.

As the Landlord was unsuccessful in their application their claim to recover the application fee is dismissed. The Tenant was successful in having all three notices to end tenancy cancelled (in three separate applications) and is therefore entitled to recover the cost of his three application fees totalling \$300.00.

Pursuant to section 72(2)(a) of the Act the Tenant may make a one-time deduction of \$300.00 in a future rent payment as compensation for the application fees.

Conclusion

The Tenant's applications are granted, in part, and dismissed without leave.

The Landlord's application is dismissed without leave to reapply.

This decision is final and binding, except where otherwise provided for under the Act, and is made on delegated authority under section 9.1 of the Act. Should the parties disagree with this decision they may file an application for review under section 79 of the Act or make an application for judicial review under the *Judicial Review Procedure Act*.

Dated: June 13, 2023

Residential Tenancy Branch