



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

**CNL, RR, RP, AAT, PSF, LRE, OLC
CNR, CNC, RR, ERP, RP, PSF, LRE, LAT, OLC**

Introduction

This hearing dealt with two applications filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to sections 27 and 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order allowing the tenant access to the rental unit pursuant to section 30;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to sections 27 and 65;
- An order for emergency repairs to be done to the rental unit pursuant to section 33;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;

- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 31; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both the landlord and the tenant attended the hearing. The landlord acknowledged being served with the tenant's two Notice of Dispute Resolution Proceedings packages. The tenant acknowledged service of the landlord's evidence. Neither party had issues with timely service of documents.

Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notices to end tenancy was the primary issue before me and that the other issues listed on the tenant's applications were not related and would be dismissed with leave to reapply.

At the hearing, the landlord stated that he no longer requires the rental unit for a close family member. As such, I determined that the landlord's Two Month Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause or 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Background and Evidence

The rental unit is one of three rooms located in the main floor of the landlord's house. The landlord lives in a separate unit on the upper floor. The tenant shares his space with 2 other tenants in common, living under separate tenancy agreements. The signed tenancy agreement shows that the rent is set at \$530.00 per month, payable on the first day of each month.

The landlord testified that he served the tenant with a 1 Month Notice to End Tenancy for Cause on June 29, 2023 by attaching a copy to the tenant's door. The tenant acknowledges receiving it the next day, on June 30th. The landlord provided multiple reasons for ending the tenancy:

1. the tenant is repeatedly late paying rent;

2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
5. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
6. tenant has not done required repairs of damage to the unit/site/property/park;

The landlord testified that the tenant paid December's rent on Friday, December 2, 2022 and that it was \$100.00 short. The tenant has not paid the remaining \$100.00 shortfall for December.

The tenant paid April's rent on April 14, 2023 and May's rent on May 8, 2023. The landlord provided screenshots of his bank statements as proof of the late payments.

The tenant testified that there was disagreement between the landlord and himself regarding utilities not provided. According to the tenant, his rent should have been reduced by \$100.00 back in December and he was in the process of negotiating a reduction. The tenant testified there was a verbal agreement with the landlord that his rent could be short \$100.00 for December.

The tenant testified that the landlord was not in agreement with the reduced rent and so he ended up paying full rent for April and May but the reason those payments were late was because the tenant was trying to negotiate a reduction in the rent. After the landlord declined the tenant's requests, the tenant conceded by paying full rent.

On July 11, 2023, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting it to the tenant's door. The tenant acknowledges receiving it the next day. The notice indicates the tenant failed to pay \$263.00 of the rent that was due on July 1, 2023.

The tenant acknowledges withholding the \$263.00 of his rent because another tenant living alongside him in the rental unit kicked his door in and threw garbage in his room. The tenant testified that he paid a locksmith \$263.00 to fix the door and he reduced this amount from the rent paid to the landlord. The tenant testified that he uploaded a copy of the invoice from the locksmith in his evidence, however I could not verify this.

The landlord testified that the door was broken by the tenant himself. The other tenant involved in the altercation told him so. To date, the tenant has not paid the remaining \$263.00 of his rent.

Analysis

In his application and during testimony, the tenant acknowledges he received the landlord's 1 Month Notice to End Tenancy for Cause on June 30, 2023, when he removed it from his door. I find the notice was effectively served on that date in accordance with section 88 of the Act. Pursuant to rule 2.6 of the Residential Tenancy Branch rules of procedure, the tenant is deemed to have filed his application on July 12, 2023, when he submitted his fee waiver documents. As the tenant did not file his application to dispute the landlord's 1 Month Notice to End Tenancy for Cause within 10 days, as required under section 47(4) of the Act, he is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice to end tenancy and must vacate the rental unit by that date. For this reason, I uphold the landlord's 1 Month Notice to End Tenancy for Cause.

Despite upholding the notice to end tenancy for the tenant's failure to file his application within 10 days as required under section 47, I have considered the merits of the landlord's reason for ending the tenancy.

The 1 Month Notice to End Tenancy for Cause provides late rent as a reason to end the tenancy. Residential Tenancy Policy Guideline 38 notes that three late payments are the minimum number sufficient to justify a notice under section 47(1)(b) of the Act. The tenant has conceded that he was late in paying rent for December, 2022, as well as April and May of 2023. The tenant justified the late payments saying that the landlord was charging him for utilities that were not being provided.

Section 26 of the *Act* is clear, 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. There are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

I find that the tenant's justification for not paying rent on the first of the month, when it was due, does not fall into any of the above noted categories. If a tenant believes that the amount of rent being paid is unjustified, the tenant could take the landlord before arbitration and seek an arbitrator's decision allowing a deduction. The tenant does not have any right to arbitrarily reduce his rent based on what he believes is fair.

Section 26 requires that the tenant pay the rent in full on the first of the month, as clearly laid out in the tenancy agreement. I find that the tenant failed to do so on December 1, 2022, April 1, 2023 and May 1, 2023. I find the tenant had no right to deduct all or a portion of the rent. For this reason, I uphold the landlord's notice to end tenancy seeking to end the tenancy pursuant to section 47(1)(b).

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a)the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and (b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have reviewed the landlord's 1 Month Notice to End Tenancy for Cause and I find it complies with the form and content provisions of section 52. As the effective date stated on the notice has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

As the notice to end tenancy was upheld under section 47(1)(b), there is no reason to determine if any of the other reasons for ending the tenancy under the landlord's 1 Month Notice to End Tenancy for Cause were valid. Likewise, the validity of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities will not be determined.

Conclusion

The notice to end tenancy is upheld. The landlord is granted an Order of Possession effective 2 days after service upon the tenant.

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: September 06, 2023

Residential Tenancy Branch