



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNRT, MNDCT, RP, AAT, PSF, LRE, LAT, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for cause;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord allow access to the rental unit for the tenant and the tenant's guests;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order permitting the tenant to change the locks to the rental unit; and
- an order that the landlord comply with the *Act*, regulation or the tenancy agreement.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which indicate that multiple applications contained in a single application must be related, and I found that the primary applications seek to cancel notices to end the tenancy. The balance of the tenant's application is dismissed with leave to reapply.

The parties agree that all of the tenant's evidentiary material has been provided to the landlord, with the exception of evidence that was not uploaded to the Residential Tenancy Branch system within the time-lines set out in the Rules of Procedure; the tenant did not provide the late evidence to the landlord. All other evidence of the tenant has been reviewed, and the evidence I find relevant to the applications to cancel notices to end the tenancy is considered in this Decision. The landlord has not provided any evidentiary material for this hearing.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause dated December 30, 2023 was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2022 and the tenant still resides in the rental unit. There is no written tenancy agreement, however, rent in the amount of \$900.00 is payable on the 1st day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$100.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home.

The landlord further testified that the tenant was served with a One Month Notice to End Tenancy For Cause and a copy has been provided by the tenant for this hearing. It is dated December 30, 2023 and contains an effective date of vacancy of January 31, 2024, but is not signed by the landlord.

On January 3, 2024 the landlord served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided by the tenant for this hearing and it is dated January 3, 2024 and contains an effective date of vacancy of January 14, 2024 for unpaid rent in the amount of \$900.00 that was due on January 1, 2024.

The landlord testified that the landlord received a cheque from the Alliance Church dated January 23, 2024 for \$450.00. On February 2, 2024 the tenant gave a cheque to the landlord for \$900.00, but the tenant only owed \$450.00, and the landlord and to go

to the bank to give some back to the tenant. The tenant also paid full rent on February 1, 2024.

The tenant testified that he lost all of his rent money so asked the landlord to give the notice to end the tenancy so the tenant could get services in the community to assist. It took awhile for the landlord to fill out the Intent to Rent form, and the parties discussed a long-term tenancy. The landlord procrastinated filling in the form. Rent has always been paid on time other than that. The landlord signed the Intent to Rent after the 10 Day Notice was issued, on January 13 or 14, 2024. The tenant told the landlord that the tenant needed that form before the tenant could get the money to pay the rent.

The tenant's witness testified that she used to live in the basement suite. The witness met the tenant and the landlord said it was okay to rent a room to the witness, who lived there from February, 2023 to September, 2023. The witness paid rent to the tenant, and then to the landlord, and made sure of that.

SUBMISSIONS OF THE LANDLORD:

The landlord just noticed that the landlord didn't sign the One Month Notice to End Tenancy For Cause, but had cause to issue it.

SUBMISSIONS OF THE TENANT:

The landlord said numerous times that if the tenant could get the rent money, the tenant could stay.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the landlord has not signed the One Month Notice to End Tenancy For Cause. The *Act* states that in order to be effective, a notice to end a tenancy given by a landlord or a tenant must be signed by the party giving the notice. Since the landlord has not done so, I find that the Notice is ineffective, and therefore, I cancel it.

With respect to the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the 10 Day Notice), I have reviewed the copy provided by the tenant and I find that it is in the approved form, is signed by the landlord, and contains information required by the law. Where a tenant is served with a 10 Day Notice, the tenant must pay the rent in full or dispute the Notice within 5 days of service or deemed service. In this case, I accept the undisputed testimony of the landlord that the tenant made a partial payment of January's rent on January 23, 2024 and the balance on February 2, 2024. The tenant

did not pay the rent within 5 days, and blames the landlord's procrastination of signing the Intent to Rent form for the delay. However, the tenant filed the Application for Dispute Resolution disputing the 10 Day Notice on January 8, 2024, which is within the 5 days.

Where a landlord accepts rent after the effective date of a notice to end the tenancy, the landlord must give a receipt, or some other written material advising the tenant that the rent money is being accepted for "Use and Occupancy Only." If the landlord fails to do so, the landlord is considered to have reinstated the tenancy. In this case, the landlord accepted rent on January 23 and February 2 and the tenant paid rent in full for February, 2024. The effective date of vacancy in the 10 Day Notice is January 14, 2024. There is no evidence that the landlord gave the tenant anything in writing or a receipt. By continuing to accept rent beyond the effective date, I find that the landlord has effectively reinstated the tenancy, and I cancel the 10 Day Notice.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated December 30, 2023 is hereby cancelled.

The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 3, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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 13, 2024

Residential Tenancy Branch