



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, MNDC

For the landlord: MNSD, OPR, OPC, MNR, MND, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause (the “Notice”) and for a monetary order for money owed or compensation for damage or loss.

The landlord applied for an order of possession for the rental unit due to alleged cause and unpaid rent, a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding the service of the applications or evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter- I have determined that the portion of the tenant’s and the landlord’s applications dealing with a request for monetary compensation and retention of the

tenant's security deposit are unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's and the landlord's applications and dismissed those portions of the said applications without considering any of the merits of the monetary claims of the parties, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause and on the landlord's application seeking an order of possession for the rental unit.

Preliminary matter-Although the landlord applied seeking enforcement of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord confirmed that she had not issued a 10 Day Notice to the tenant. Therefore that portion of her application was not considered.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause?

Is the landlord entitled to an order of possession for the rental unit based upon her 1 Month Notice to End Tenancy for Cause?

Background and Evidence

There is no written tenancy agreement; however, the landlord provided undisputed evidence that the tenancy began in October 2012, monthly rent is \$800, due on the first day of the month, and that the tenant paid a security deposit of \$400.

The rental unit is a manufactured home on acreage.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support the Notice.

The landlord testified that she served the tenant a 1 Month Notice to End Tenancy for Cause on or about July 21, 2014 by attaching it to the tenant's door, listing an effective move out date of August 31, 2014.

The causes listed on the Notice alleged that the tenant is repeatedly late in paying rent, twice, has seriously jeopardized the health or safety or lawful right of another occupant

or the landlord, put the landlord's property at significant risk, and has caused extraordinary damage to the rental unit.

The landlords' relevant documentary evidence included a copy of a returned rent cheque, a written explanation of events leading to the Notice being issued, faint copied photos, which were of no value due to the poor quality of the copied paper, a realtor's email, which was dated August 11, 2014, and a copy of a statement from a neighbour.

In support of her application and Notice, the landlord submitted the tenant has paid rent late on two occasions. When asked for which months the rent was late, the landlord was unable to answer. She then agreed that this cause should be removed.

As to the remaining alleged causes, the landlord submitted that the tenant ran over a water pipe and that he keeps rebuilding on her property. The landlord submitted further that the tenant has moved the shed, ripped out wires, and has threatened that he will tear her property apart. The landlord submitted further that the tenant has removed the stalls from the barn on the property.

The landlord submitted further that the main cause for seeking an end to the tenancy was due to the tenant's behaviour, such as yelling at her and being belligerent and condescending.

Tenant's response-

The tenant denied damaging the wiring, as a windstorm took out the wires and the skylights, due to the poor condition of the property and structure. The tenant submitted further that he has improved the property, not destroyed the property.

The tenant submitted further that he has not removed the stalls in the barn, as they are of removable planks, and that the planks are stacked inside the barn.

The tenant submitted further that he put doors on the shop for security purposes and that he installed a stove, fridge and water filter system at his own expense.

The tenant submitted further that the landlord has a difficult personality, which is why he has given her post dated rent cheques, to lessen his dealings with her.

The tenant's relevant documentary evidence included photographs of the rental unit and residential property.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenant's application-

I grant the tenant's application.

The landlord had the onus of proving the causes listed on the Notice and I find that the landlord has not presented sufficient evidence to demonstrate that tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk, and has caused extraordinary damage to the rental unit.

In this case, the landlord submitted that the tenant damaged the property and the tenant denied damaging the property, with photographic evidence in support of his position.

When the evidence consists of conflicting and disputed verbal testimony, as is the case here, then the party who bears the burden of proof, the landlord here, will not likely prevail upon a balance upon a balance of probabilities in the absence of independent documentary evidence.

In further reaching this conclusion, I also considered that the landlord has presented no evidence of the state of the rental unit and residential property prior to and at the start of the tenancy to assess whether or not the tenant has caused damage to the property during the tenancy.

The landlord submitted a statement from a real estate agent, which I find failed to prove that the tenant committed any damage.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued July 21, 2014, listing an effective move out date of August 31, 2014, is not supported by the evidence and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Landlord's application-

As I have granted the tenant's application and cancelled the Notice, I dismiss the landlord's application for an order of possession for the rental unit. As I have dismissed the landlord's application, I also dismiss her request to recover the filing fee.

Conclusion

The tenant's application seeking cancellation of the Notice is granted and the Notice is cancelled.

The landlord's application seeking an order of possession for the rental unit based upon her 1 Month Notice is dismissed

The portion of both parties' applications seeking monetary compensation was severed and 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: September 17, 2014