



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC, MND, MNSD, FF, CNC, OLC, ERP, RR

Introduction

This hearing was convened in response to cross applications.

On August 18, 2014 The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to make emergency repairs; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for authority to reduce the rent for services, facilities, and repairs agreed upon but not provided.

The male Tenant stated that the Application for Dispute Resolution and Notice of Hearing were personally served to the Landlord on August 18, 2014. The Landlord stated that these documents were not served to him until October 10, 2014.

On August 22, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession; for a monetary Order for damage to the rental unit; to retain the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via regular mail, on September 26, 2014. The male Tenant stated that these documents were not received in the mail. The Landlord stated that these documents were also personally served to the Tenant by the Landlord's son on October 04, 2014. The male Tenant acknowledged receiving of these documents from the Landlord's son.

The male Tenant stated that a large package of evidence was submitted to the Residential Tenancy Branch on October 10, 2014 and was served to the Landlord on October 11, 2014. I find that this evidence was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure. The parties were advised that I did not have this evidence and that I could not, therefore, consider the evidence during these proceedings.

The Landlord was given the opportunity to request an adjournment for the purposes of reviewing the documents that he stated he did not receive until October 10, 2014. The Tenant was given the opportunity to request an adjournment for the purposes of reviewing the documents that he stated he did not receive until October 04, 2014 and to provide me with the opportunity to receive the documents the Tenant submitted to the Residential Tenancy Branch on October 10, 2014.

The Landlord and the Tenant indicated they were willing to proceed with this hearing, with the understanding that they could request an adjournment later in the hearing if it became necessary for me to view a particular document that has been submitted or if either party needs more time to review a particular document. This hearing was concluded without either party requesting an adjournment.

Preliminary Matter #1

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Tenant's Application for Dispute Resolution provides no details of the need for emergency repairs; no details of what services, facilities, or repairs have not been made/provided; and no details of the need for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

The male Tenant stated that these details are outlined in the documents that were served to the Landlord on October 11, 2014, which I do not have.

I find that proceeding with the Tenant's application for an Order requiring the Landlord to make emergency repairs; for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement; and for authority to reduce the rent for services, facilities, and repairs agreed upon but not provided would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claims. Even if those details were outlined in the documents that were served to the Landlord on October 11, 2014, this did not, in my view, provide sufficient time for the Landlord to respond to those claims.

I therefore refuse to consider these particular claims at these proceedings. The Tenant retains the right to file another Application for Dispute Resolution regarding these claims.

Preliminary Matter #2

The Landlord is seeking compensation for damage to the rental unit.

Section 37(2) of the *Act* requires a tenant to leave the rental unit undamaged at the end of the tenancy. I have authority to grant compensation to a landlord and/or allow the landlord to retain a security deposit if a tenant does not comply with section 37(2) of the *Act*.

As this tenancy has not yet ended and the Tenant may still repair any damage that has been damaged by the Tenant during the tenancy, I find that the Landlord's claim for compensation is premature.

I therefore refuse to consider the Landlord's claim for compensation for damage and to retain the security deposit at these proceedings. The Landlord retains the right to file another Application for Dispute Resolution regarding these claims.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, be set aside or should the Landlord be granted an Order of Possession?

Background and Evidence

After considerable discussion the Landlord and the Tenant mutually agreed to resolve the remaining issues in dispute at these proceedings under the following terms:

- The tenancy will end on December 31, 2014, at which time the Tenant will vacate the rental unit
- The Landlord will receive an Order of Possession on the basis of this settlement agreement.

Analysis

The remaining issues in dispute at these proceedings have been resolved in accordance with the aforementioned terms.

Conclusion

On the basis of the settlement agreement, I grant the Landlord an Order of Possession that will be effective on December 31, 2014.

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: October 15, 2014

Residential Tenancy Branch

