



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, LRE, CNC, CNR, OPC, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 9, 2018 for:

1. An Order allowing access to the site - Section 70;
2. An Order cancelling notices to end tenancy for cause and for unpaid rent - Section 46 and 47;
3. An Order suspending the Landlord’s right of entry - Section 70; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 16, 2018 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants state that the second named Tenant is not correctly named in the Landlord’s application and provides the correct first and last name. The Landlord

agrees that its application should be amended to correct the naming of the Tenants. The Landlord's application is therefore amended to set out the correct name of the second named Tenant.

The Parties agree that the Tenants did not serve the Landlord with the Tenant's application. The Landlord states that she was informed by the Residential Tenancy Branch (the "RTB") of the existence of the Tenant's application. The Tenant states that this lack of service was due to a misunderstanding as the Tenants believed that the RTB was giving the Landlord the copy of the application and evidence that the Tenants submitted to the RTB. The Landlord was read the details of the application and the Tenant's evidence and agreed to proceed without a copy of the application and evidence in front of the Landlord.

It was noted that the Landlord's application included monetary claims in relation to damage to the unit. The Landlord confirms that no monetary claim was made for unpaid rent as the rent has been paid up to date.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the Landlord's monetary claims are not related to the matter of whether the tenancy will end, I dismiss these claims, with the exception of the claim for recovery of the filing fee, with leave to reapply.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Are the Tenants entitled to orders for access and Landlord's entry?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on August 1, 2015. The tenancy agreement provides that rent of \$1,500.00 is payable on the first day of each month. On October 6, 2018 the Landlord served the Tenants with a one month notice to end tenancy for cause (the "Notice"). The reasons stated on the Notice includes that the Tenants have been repeatedly late paying rent. The Notice sets out an effective date of November 9, 2018.

The Landlord states that although the tenancy agreement indicates a security deposit was paid no security deposit was ever collected. The Landlord states that the one Tenant was an employee when the tenancy originally started and ceased to be an employee in December 2017. The Tenant states that the \$900.00 indicated on the tenancy agreement was paid and that the rent was originally \$1,800.00 per month. The Tenant states that prior to the start of the tenancy the Tenant had ceased working for the Landlord and at the onset of the tenancy the Tenant was not an employee of the Landlord. The Tenant states that he became an employee again sometime after the start of the tenancy.

The Landlord states that the Tenants have been late paying rent for each month from March to October 2018 inclusive. The Landlord provides e-transfer receipts as supporting evidence of the dates that rent was paid. The Tenant agrees that rents were paid late and states that the rents have always been paid late as the Landlord agreed to accept late rent due to the Landlord being late paying the Tenant for wages. The Tenant agrees that in the past several months the Landlord has asked the Tenants more than once to pay the rent on time.

Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. The parole evidence rule provides that a written agreement may not be changed by oral evidence alone. Given the written tenancy agreement setting

out payment of rent of the first day of each month, considering that the Tenant has not provided any documentary evidence of any change to this term, and given the Tenant's evidence that the Landlord did, in the past several months, ask for the Tenant to pay the rent on time, I find that rent is payable on the first day of each month and that the Parties did not change this term by oral agreement.

Section 47(1)(b) provides that a landlord may end a tenancy by giving notice to end the tenancy where the tenant is repeatedly late paying rent. Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Based on the undisputed evidence that the Tenants paid the rent late for several months prior to being given the Notice I find that the Landlord has substantiated that the Notice is valid for this reason. As a result I find that the Tenants are not entitled to a cancellation of the Notice and that the Landlord is entitled to an order of possession. As the tenancy is ending on the basis of the valid Notice it is not necessary to consider whether the notice to end tenancy for unpaid rent is valid.

As the tenancy is ending and as the Tenant's claims in relation to access and Landlord's entry are only relevant to an ongoing tenancy I dismiss these claims. As the Tenants' claims have not been successful I decline to award recovery of the filing fee and in effect the Tenants' application is dismissed in its entirety.

Section 47(2) of the Act provides that a notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act provides that incorrect effective dates are automatically changed to the correct effective dates. As the Notice was given to the Tenants on October 6,

2018 and as rent is payable on the first day of each month I find that the effective date of the Notice is automatically changed to the correct effective date of November 30, 2018. As the Landlord is entitled to an order of possession I make this order effective for November 30, 2018.

Given the terms of the written tenancy agreement and the Tenant's oral evidence of payment of a security deposit of \$900.00 I find on a balance of probabilities that the Tenants did pay a security deposit of \$900.00. As the Landlord's claim for the order of possession has been successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and I order the Landlord to retain \$100.00 from the security deposit plus zero interest of \$900.00.

Conclusion

The Tenants application is dismissed.

I grant the Landlord an order of possession effective 1:00 p.m. on November 30, 2018.

I Order the Landlord to retain \$100.00 from the security deposit of \$900.00 in full satisfaction of the filing fee claim.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: November 20, 2018

Residential Tenancy Branch