



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, LRE, LAT, PSF, OLC, MNDCT, RR, FFT

Introduction

On January 4, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 13, 2021, the Tenant then made another Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*. In addition, the Tenant again applied seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the first Notice of Hearing and evidence package to the Landlord by registered mail on January 9, 2021, but the Landlord denied receiving this package (the registered mail tracking number was noted on the first page of this Decision). The tracking history indicated that a notice card was left for the Landlord, but this package was not picked up. Based on this undisputed evidence, I am satisfied that the Landlord was deemed to have received the Tenant's Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted all of the Tenant's evidence and will consider it when rendering this Decision. However, the Tenant advised that he submitted late evidence to the Residential Tenancy Branch that he did not serve to the Landlord. As such, I have excluded the Tenant's late evidence and will not consider it when rendering this Decision.

The Tenant advised that he served the second Notice of Hearing and evidence to the Landlord by hand on January 17, 2021. The Landlord denied receiving this package at first and then confirmed that she was served this package. Based on this undisputed evidence, I am satisfied that the Landlord was served the Tenant's second Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence package to the Tenant by posting it on his door on January 26, 2021, and the Tenant confirmed that he received this package. Based on this undisputed evidence, I am satisfied that the Tenant was sufficiently served the evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the two notices to end tenancy, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the notices cancelled?
- If the Tenant is unsuccessful in cancelling the notices, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Neither party could agree when the tenancy started, but the most current tenancy began in April of either 2019 or 2020. While the Landlord advised that rent was \$200.00 per week, the Tenant in effect agreed as he stated that rent was paid in the amount of \$800.00 per month and that he paid on the first day of each month. All parties agreed that neither a security deposit, nor a pet damage deposit, were paid by the Tenant. A written tenancy agreement was not created as required by the *Act*.

The Landlord was unsure if this tenancy fell under the jurisdiction of the *Act*. It was her belief that as the Tenant paid rent weekly and that as she ran it like a motel, she did not believe that the *Act* would apply. All parties agreed that the rental unit was entirely self-contained. The Tenant advised that it was his belief that the *Act* applied to this tenancy as he had been paying monthly rent for a substantial amount of time. Regarding the cleaning service, he acknowledged that he had some sort of verbal agreement with the Landlord to allow her to enter the rental unit so that she could clean. He advised that he did not warn her in writing to refrain from this cleaning as it “worked out well” for him.

After hearing substantial submissions from the parties with respect to jurisdiction, the Landlord advised that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant by being posted to the Tenant’s door, but she was not sure when she did this. The Tenant confirmed that he received this notice on January 8, 2020. The Notice did not indicate that any rent was owing, and the Landlord acknowledged that she served this in error.

With respect to a Two Month Notice to End Tenancy for Landlord’s Use of Property, the Landlord confirmed that she never served such a notice, and only verbally requested that he leave the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

The first issue I will address is whether or not the *Act* has jurisdiction over this tenancy. While the Landlord believes that rent was collected weekly and that this would mean that the *Act* does not have jurisdiction, I find that there is contradictory testimony with respect to whether rent was paid weekly or monthly. Regardless, even if rent was collected weekly, this would not necessarily be indicative of this not being a tenancy that fell under the jurisdiction of the *Act*. Given that the Landlord had been collecting rent in the amount of \$800.00 per month for at least over a year, given that she had not been charging tax on rent, and given that there is insufficient evidence that she was managing this rental like a motel or a B&B, I am satisfied that this is a tenancy covered under the *Act*.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served this notice on or around January 8, 2021 by being posted to his door. However, there is no amount of rent owing on the notice and the Landlord acknowledged that she served this notice in error. As such, I am satisfied that this notice is not valid, and I find that it is cancelled and of no force or effect.

With respect to a Two Month Notice to End Tenancy for Landlord's Use of Property, as the Landlord has not served the approved form as required by the *Act*, and only verbally requested this of the Tenant, I am not satisfied that this constitutes a valid manner with which to end a tenancy. As such, this is dismissed in its entirety as well.

After hearing submissions with respect to the Application to cancel the notices to end tenancy, the parties advised that the Tenant actually gave up vacant possession of the rental unit on or around February 2, 2021. As such, it was not even necessary to consider any of the issues related to the cancellation of notices to end the tenancy.

With respect to the filing fees, as the Landlord never served a Two Month Notice to End Tenancy for Landlord's Use of Property, I find that it was not necessary for the Tenant to make an Application to cancel this notice. Consequently, I am not satisfied that the Tenant was successful in this Application, and I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Regarding the 10 Day Notice to End Tenancy for Unpaid Rent, as the Landlord served this notice mistakenly, I am satisfied that the Tenant was successful in this Application. I find that the Tenant is entitled to recover the \$100.00 filing fee.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 29, 2021

Residential Tenancy Branch