



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, RP, OLC, RR
OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord make repairs to the rental unit or property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant. The landlord's application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application.

The hearing was originally scheduled to be heard at 11:00 a.m. on March 25, 2022, at which time the tenant and an agent for the tenant attended the hearing, as well as the landlord with Legal Counsel and an interpreter. I adjourned the hearing at the request of the tenant. My Interim Decision dated March 28, 2022 was provided to the parties which ordered that any evidence that either part wishes to rely on must be provided by the tenant to the landlord by April 15, 2022, and by the landlord to the tenant as rebuttal evidence by April 29, 2022, and that all evidence must be limited to evidence related to a notice to end the tenancy for unpaid rent or utilities. I further ordered that evidence may be exchanged by email.

The Interim Decision dated March 28, 2022 also states that the parties had been advised that multiple applications contained in a single application must be related, and I dismissed the tenant's applications for an order that the landlord make repairs to the

rental unit or property; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided, all with leave to reapply.

On May 10, 2022, the landlord attended with Legal Counsel and another interpreter. The tenant also attended with the tenant's daughter, and the tenant submitted that the tenant's daughter occupies the rental unit; the tenant (SK) only signed the lease, and disconnected from the call. I find that the tenant referred to has sub-let to her daughter, and the tenant's daughter (EK) is hereafter referred to as "the tenant."

Also on May 10, 2022 the parties each gave affirmed testimony, however the hearing did not conclude and I adjourned it to June 22, 2022 and permitted both parties to provide further evidence no later than 7 days prior to the hearing date. My Second Interim Decision was provided to the parties.

On June 22, 2022 the parties again attended, and the tenant again applied to adjourn stating that she was going to Emergency, then has a doctor appointment. Legal Counsel for the landlord had no objection to medical evidence being provided without providing same to the landlord. My Third Interim Decision was provided to the parties which ordered that the tenant be permitted to upload the medical evidence, and I adjourned the hearing to July 7, 2022, peremptory.

On July 7, 2022 the landlord's Legal Counsel and the tenant each gave submissions, and the tenant and the landlord were permitted to give more oral testimony, subject to cross examination. The hearing did not conclude and was adjourned to August 16, 2022 and my Fourth Interim Decision was provided to the parties dated July 14, 2022.

On August 16, 2022 the landlord continued with oral testimony and was cross examined by the tenant. The parties again gave oral submissions.

I found that a large amount of the tenant's evidence and oral testimony were in support of the tenant's applications for an order that the landlord make repairs to the rental unit or property; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided. Having dismissed those applications with leave to reapply, only the tenant's testimony relating to the notice to end the tenancy is considered in this Decision.

All evidence provided, with the exception of the commentary included with the tenant's medical evidence, has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

LANDLORD'S EVIDENCE:

On May 10, 2022, the landlord testified that this fixed-term tenancy began on May 1, 2015 expiring on May 1, 2016, and then was extended again on March 1, 2016 until May 1, 2018, thereafter reverting to a month-to-month tenancy, and the tenant still occupies the rental unit. Rent in the amount of \$3,500.00 is payable on the 1st day of each month. On April 18, 2015 the landlord collected a security deposit in the amount of \$1,750.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant does not live in the rental unit, but is occupied on short term sub-leases, and the sub-tenants change often. The rental house has people living there which changes constantly, up to 10 people from 7 different groups. Travellers stay on a short-term basis.

The tenant is in arrears of rent the sum of \$3,500.00 for December, 2021 rent and \$800.00 for March, 2021 rent. On December 4, 2021 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by email, and a copy has been provided for this hearing. It is dated December 4, 2021 and contains an effective date of vacancy of December 14, 2021 for unpaid rent in the amount of \$3,500.00 that was due on December 1, 2021. The landlord has also provided a Proof of Service document stating that the Notice was served on December 4, 2021 by leaving it in the mailbox or mail slot with a witness present. The landlord testified that first he pasted it to the door of the rental home, then served it by email on December 4 about 4:45 p.m. Then around 5:00 p.m. the landlord pasted it to the door and around 7:00 p.m. delivered it to the place that the tenant lives at. The tenant did not pay the outstanding rent.

The landlord also testified that in a previous Decision of the Residential Tenancy Branch, a copy of which has been provided for this hearing, the tenant had testified that she did not receive a notice to end the tenancy. The tenant does not live at the rental unit and never did which is why the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in 3 ways, including where the tenant currently resides, with a witness present.

TENANT'S EVIDENCE:

The tenant testified that there have been 6 years of invalid notices to end the tenancy given by the landlord. Copies of previous Decisions have also been provided for this hearing.

Sub-letting would cover the rent, however there have been more than 2 years of harassment by the landlord resulting in high vacancies instead of being able to accomplish the goal. The landlord has impaired the tenant's ability to sub-let, which is included in the tenancy agreement. The tenant has struggled and has been at a disadvantage.

The landlord claimed to have sold the building, which is not true. The landlord also stated that the tenant had to vacate so that a suite would be developed to a show room, but nothing was filed at City Hall. In a previous hearing the landlord stated that sub-letting was not permitted. The landlord also claimed that there were too many people in the rental unit, however the Arbitrator in one of the previous hearings said that even if there were 10 people it was acceptable; it's zoned for multi-family. The Arbitrator stated that the landlord was trying to circumvent the system. The landlord makes false statements to the Residential Tenancy Branch, then in the course of hearings, the landlord doesn't dispute any of the tenant's testimony. In the most recent hearing the tenant gave a large evidence package to the landlord, and the Arbitrator determined that the landlord had committed fraud claiming that he had served a notice to end the tenancy.

The landlord has failed to make required repairs to the rental unit, and has repeatedly attended on the property peering in windows, taking photographs and talks to people living there telling them that the tenant is not allowed sub-tenants. The damage is done and people move out. The landlord also did an inspection and his attitude was so foul that more than 1 person asked if they could end their lease early, being uncomfortable with the landlord's angry approach. One tenant was sick in bed and the tenant asked the landlord not to take photos of the tenant in bed, but he didn't care and it was very

rude. Tenants were shocked by how rude the landlord was, accosting and questioning them constantly, causing people to leave. Police were also called who told the landlord to not return. Letters from past sub-tenants have also been provided for this hearing.

The landlord also told the tenant that if the rent isn't increased, the landlord won't make repairs, and the rental home was without heat in the winter. The tenant had to buy used oil heaters. The landlord has caused a crippling effect on the tenant, and always leaves it to the tenant to look after things, such as repairs, and the tenant has to miss work to deal with them. All previous hearings resulted in the tenant's favour.

Analysis

The *Residential Tenancy Act* is clear: a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. Further, where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the Notice is of no effect if the tenant pays the rent within 5 days.

During the course of the hearing, I brought to the party's attention case law that suggests that any notice to end a tenancy given by a landlord must be given in good faith, but I was not able to locate it and provide a copy to the parties. However, in the case of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a landlord may be found to have not acted in good faith if the landlord had, for example, refused rent from a tenant. That is not the case here. In reading the Decisions of previous hearings, I am not satisfied that the landlord has been totally honest, and has attempted to remove the tenant from the rental unit by issuing several notices to end the tenancy in the past without success.

The landlord testified that the tenant doesn't reside in the rental unit but sub-lets to short-term tenants, which is not disputed by the tenant. The tenant testified that the landlord has interfered with the tenant's ability to pay rent by deliberately accosting sub-tenants and refusing to make repairs. Those are matters that ought to have been adjudicated upon prior. The latest Decision of the Residential Tenancy Branch is dated June 4, 2021, and the tenant had an opportunity to make those applications between June 4 and December 1, 2021.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), and I find that it is in the approved form and contains information required by the *Act*. As stated above, the law specifies that once served, the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect. In this case, I find that the Notice was deemed served 3 days after December 4, 2021 and the tenant paid

December's rent on May 10, 2022, clearly not within 5 days. The landlord also testified that the tenant is still in arrears of rent the sum of \$800.00 for March, 2021, which was not disputed by the tenant.

In the circumstances, I find that the Notice was issued in accordance with the *Act*, and I dismiss the tenant's application to cancel it, and I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I further find that the landlord has established a claim of \$800.00 for unpaid rent.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2021 is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00.

This order is final and binding and may be enforced.

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: August 25, 2022

Residential Tenancy Branch