



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to deal with the tenant's request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant did not appear at the hearing; however, the landlord did and requested an Order of Possession. The hearing proceeded in order to determine whether the Notice was sufficiently served upon the tenant, and otherwise valid and enforceable.

Issues(s) to be Decided

Does the Notice to End Tenancy comply with the Act and is the landlord entitled to an Order of Possession?

Background and Evidence

Upon review of the tenancy agreement submitted as evidence by the landlord, I find the tenancy agreement was renewed on September 6, 2007. The tenant is required to pay \$624.00 on the 1st day of every month.

The landlord testified that the *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) was mailed to the tenant on April 6, 2009. The Notice indicates that the tenant failed to pay rent of \$682.08. In making her application, the tenant indicated she received the Notice on April 17, 2009 and disputed the Notice on April 20, 2009.

The landlord submitted evidence that the amount of \$682.08 that appears on the Notice relates to repair of a sliding glass door in the rental unit that the tenant had verbally agreed to pay for. The landlord submitted that clause 27 of the tenancy agreement deems damages caused by the tenant to be treated as unpaid rent.

Clause 27 provides, in part, “The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may seek a monetary order through dispute resolution under the Act for the cost of repairs, serve a notice to end a tenancy, or both.”

Analysis

Pursuant to section 46 of the Act, a landlord may serve a tenant with a 10 Day Notice to End Tenancy where the tenant fails to pay rent when due. “Rent” is defined in section 1 of the Act to mean money paid or agreed to be paid by a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.

Costs to repair a rental unit do not meet the definition of rent, as provided in section 1 of the Act. Accordingly, a landlord cannot use a 10 Day Notice to try to collect the cost of repairs from a tenant or end the tenancy and I find the 10 Day Notice to be invalid and of no effect on the tenant. Therefore, I deny the landlord’s request for an Order of Possession.

Upon careful review of section 27 of the tenancy agreement I do not agree with the landlord’s submission that the costs of repair are deemed to be unpaid rent pursuant to the tenancy agreement. Even if the tenant agreement did deem the repairs to be treated as unpaid rent, such a term would contradict the Act and would not be enforceable. Rather, the landlord is at liberty to make an Application for Dispute Resolution in order to request a Monetary Order against the tenant.



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The tenancy agreement provides that the landlord may serve a notice to end the tenancy if a tenant fails to comply with the tenant's obligations to repair and maintain the rental unit and the landlord is informed that the Act provides for such an avenue under section 47 of the Act. Section 47(g) of the Act provides that a landlord may serve a *1 Month Notice to End Tenancy for Cause* where the tenant does not repair damage to the rental unit within a reasonable time.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent, dated April 6, 2009, is invalid and of no effect on the tenant. The landlord's request for an Order of Possession is denied.

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: May 27, 2009.

Dispute Resolution Officer