



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

CNC, CNR, OPR, FF

Introduction

This was a cross-application hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

The tenant has made Application for Dispute Resolution requesting that a 10 Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause be cancelled. The tenant has requested compensation for filing fee costs for this Application.

The landlord has made Application for Dispute Resolution requesting an Order of possession for unpaid rent, compensation for unpaid rent and compensation for filing fee costs for this Application.

Preliminary Matter

The landlord has requested an Order of possession based upon the 10 Day Notice to End Tenancy only. Therefore, the One Month Notice to End Tenancy will be considered only as part of the tenant's Application for Dispute Resolution.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on October 14, 2009 be cancelled?

Should the One Month Notice to End Tenancy for Cause issued on October 30, 2009 be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to an Order of possession based upon the 10 Day Notice to End Tenancy?

Is either party entitled to filing fee costs?

Background and Evidence

This tenancy commenced in May 2008. The amount of rent is in dispute; the landlord has supplied receipts indicating payments of \$700.00 per month. The tenant submitted that rent is \$650.00 per month.

The Landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on December 1, 2009 for repeated late payment of rent. The landlord has submitted copies of receipts which indicate that throughout this tenancy the rent has been paid at different times of the month. The parties agreed that the verbal tenancy agreement required payment on the first day of each month. Since January 2009 the tenant has paid rent after the first day of the month on at least five occasions.

The tenant testified that at the start of the tenancy it was verbally agreed that rent would be \$650.00 per month but that an additional \$50.00 would be paid in order to create a credit to be used when the tenant wished to utilize this excess. The tenant's witness stated she was present when the parties came to the verbal tenancy agreement at \$650.00 per month. The landlord testified that rent has always been \$700.00 per month and that they did not agree to allow extra payments to accumulate for future use by the tenants.

The landlord testified that they issued the 10 Day Notice to End Tenancy for Unpaid Rent on October 14, 2009 and the tenant confirmed receipt of the Notice on that date. The landlord stated that the tenant paid \$650.00 rent in November and was issued a receipt for use and occupancy only. The tenant confirmed that rent for October was not paid and that they had a credit with the landlord that would cover rent for that month.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the tenants have failed to pay rent for October and that the 10 Day Notice to End Tenancy issued on October 14, 2009 is of full force and effect. The landlord is entitled to an Order of possession effective two days after service to the tenant.

I have not accepted the tenant's testimony that rent was \$650.00 per month, as all payments were in the sum of \$700.00 and no evidence of any other arrangement was presented which I find plausible. The witness did testify that rent was to be \$650.00 per month, but I find that, subsequently, the tenant agreed to pay \$700.00. The tenant's submission that \$50.00 of each payment was to form a credit to the tenants is not

supported by any documentation and I find that, on the balance of probabilities, rent was \$700.00 per month.

I find that the Notice to End Tenancy for Cause is of no force or effect. The landlord has accepted late rent payments throughout this tenancy and provided no evidence that the tenant had been warned that rent must be paid on the first day of each month. The parties agreed that rent was to be paid by the first day of each month, but a practice that remains in effect over an extended period of time can be said to alter an agreement.

I find that the landlord is entitled to compensation in the sum of \$750.00 for unpaid rent in October and \$50.00 in November, 2009.

As each party has been partially successful I find that neither is entitled to return of filing fee costs.

Conclusion

As I have determined that the tenant has failed to pay rent, I am dismissing the tenant's application to set aside the 10 Day Notice to End Tenancy for Unpaid Rent issued on October 14, 2009 and I grant the landlord an Order of Possession that will be effective two days after service.

I have cancelled the One Month Notice to End Tenancy for Cause issued on October 30, 2009; it is of no force or effect.

I find that the landlord has established a total monetary claim of \$750.00 comprised of unpaid October and November, 2009 rent and I grant the landlord an order under section 67 of the Act in that amount. This order may be filed in the Provincial Court (Small Claims) 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: November 17, 2009.

Dispute Resolution Officer