



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, OPB, MNR, FF, DRI, CNC, CNR, LAT

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent and the filing fee. The tenant applied to cancel the notice to end tenancy. She also applied for a monetary order for compensation under the *Act* and for an order to authorize her to change the locks to the rental unit.

The hearing was originally scheduled for December 01, 2009. Both parties attended the hearing on that date and the issues at hand were discussed at length. During that hearing it was determined that the landlord had filed new evidence which the tenant had not received. The hearing was adjourned in order to give the tenant an opportunity to review the landlord's evidence. A new hearing date was set.

The office of the Residential Tenancy Branch notified both parties of the new hearing date by express post. Despite having been served the notice of hearing and having made application for a dispute resolution hearing, the tenant did not attend the adjourned hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have cause to end the tenancy? Does the tenant owe rent? Has the tenant breached a term of the tenancy agreement? Does the tenant have four children residing with her in the rental unit? Is the tenant entitled to compensation for anxiety and stress she suffered when the landlord served her the eviction notice?

Background and Evidence

The tenancy started on December 17, 2002. The rental unit is located in a subsidized housing complex. The amount of rent and the size of the rental unit are determined by the tenant's income and the number of occupants. The tenant was assigned a four bedroom unit based on the information that she provided regarding the number of occupants. Rent without the subsidy is \$1508.00 due on the first day of each month.

On July 31, 2009, the landlord served the tenant with a one month notice to end tenancy for cause. The reasons for the notice were that the tenant has significantly interfered with or unreasonable disturbed another occupant, has seriously jeopardized the health or safety of another occupant and has adversely affected the quiet enjoyment, security, safety or physical well being of another occupant. The parties resolved their issues and the tenancy continued.

On September 09, 2009, the landlord sent the tenant a letter advising her that after reviewing her tenant profile, it was determined that she was over housed and would need to transfer from a four bedroom apartment to a three bedroom apartment. The tenant stated that she had four children living with her, while the landlord stated that only two children lived with her. The other two children that the landlord stated did not live in the rental unit are not the biological children of the tenant. One of these two children is a 19 year old male.

The tenant refused to a move to a smaller apartment and maintained that she had four children living with her. The landlord provided evidence by way of notarized statements regarding the number of occupants in the unit. In addition, the landlord provided a statement from the biological parent of the two children in question, that states that the children do not reside with the tenant.

Since it was determined that the tenant was not entitled to a four bedroom apartment and she refused to move, the tenant lost the subsidy and was required to pay full rent.

The tenant's source of income is the ministry of social services and she was unable to pay full rent. On November 02, the tenant was served with a ten day notice for non payment of rent.

The landlord also testified that the tenant was disruptive and involved in activity that called for the attention of the police. The landlord filed letters of complaint from other occupants.

The landlord applied for an order of possession and a monetary order for outstanding rent for November (\$889.00) and December (\$1508.00).

The tenant also applied for compensation for anxiety and stress and loss of work that she suffered due to the issuance of the notice to end tenancy. The tenant did not provide any evidence to support her claim for compensation.

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. I find that the tenant resides in the unit with her two biological children but has reported to the landlord that she had four children living with her in the rental unit. Therefore the tenant has breached a material term of the tenancy agreement. In addition, the tenant owes the landlord rent for November and December.

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In the absence of evidence to the contrary, I find that the tenant owes rent for November (\$889.00) and December (\$1,508.00) for a total of \$2,397.00.

The tenant received the notice to end tenancy on November 02, 2008 and did not pay overdue rent within five days of receiving the notice. The tenant disputed the notice by making application for dispute resolution; but did not attend the adjourned hearing. During the first hearing, the tenant did not provide adequate testimony to justify her application to cancel the notice to end tenancy.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Accordingly, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

In the absence of contradictory evidence, I find that the landlord has established a claim of \$2,397.00 for unpaid rent. Since the landlord has proven his case, I find that he is also entitled to the recovery of the filing fee.

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$2,447.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is ending, the tenant's application for authorization to change locks is moot and accordingly dismissed. The tenant's application for compensation is also dismissed for lack of evidence.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of 2,447.00. The tenant's application is dismissed in its entirety.

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: December 08, 2009.
