

DECISION

Dispute Codes CNC, CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession and a monetary order. The tenant has applied to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and his agent and the tenant and her agent/advocate.

At the onset of the hearing I noted the landlord had provided no evidence for his application but that the tenant had provided, in her evidence, copies of three Notices to End Tenancy. Two of these notices were for unpaid rent; one was issued on March 3, 2010 and one was issued on March 12, 2010.

The landlord's Application for an order of possession was based on unpaid rent and he clarified that he was applying based on the Notice to End Tenancy issued on March 12, 2010. The tenant had submitted her Application on March 5, 2010 to cancel both a notice to end tenancy for unpaid rent and a notice to end tenancy for cause; therefore her application dealt with the Notice for Cause and the Notice for Unpaid rent issued on March 3, 2010.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Additionally, it must be decided if the tenant is entitled cancel a 10 Day Notice to End Tenancy for Unpaid Rent; a "15" Day Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 46, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on April 1, 2009 as a month to month tenancy for a monthly rent of \$600.00 due on the 1st of the month. A security deposit of \$300.00 was paid. While not part of this application the parties are currently disputing the rental amount based on a change in services provided to the tenant.

The tenant has submitted the following documents into evidence:

- A copy of Page 1 of an altered 1 Month Notice to End Tenancy for Cause undated by the landlord with an effective vacancy date of March 15, 2010. The alterations include: changing the “1 month” notice to a “15 day” notice; and the second page is handwritten indicating the “cause” to end the tenancy is that the landlord’s daughter and son-in-law need to move into the rental unit and the tenant has not paid rent for two months;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 3, 2010 with an effective date of March 13, 2010 citing the tenant has not paid \$1,200.00 in rent that was due on March 13, 2010;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 12, 2010 with an effective date of March 22, 2010 citing the tenant has not paid \$1,200.00 in rent that was due on March 1, 2010;
- A copy of rent receipts for the months of March 2010 and April 2010, there is no notation on the rent receipt that the rent received was for use and occupancy only;
- A copy of a government form entitled “Shelter Information” indicating the amount of rent and the security deposit;
- A copy of a print out from a cheque cashing institution showing a history of the tenant’s cheque cashing; and
- A summary of events and a history of the tenancy.

The landlord and tenant that until March of 2010 the landlord has not provided rent receipts to the tenant when rent is paid. The landlord states the tenant did not pay rent to the landlord for the months of February and March but since the notice was issued on March 12, 2010 the tenant did pay March rent.

The tenant testified that her normal practice to pay rent was to pay cash to the landlord either by going upstairs, where the landlord lives, or when she ran into him outside on the property. The tenant states that she gave her February rent in cash to the landlord on the afternoon of February 1, 2010 while the landlord was working in the yard.

The landlord testified that he wasn’t at home on the afternoon of February 1, 2010 because he was at work. He did testify that he returned home from work around 3:45 or 4:00 p.m. The landlord stated he did not receive any rent from the tenant.

Analysis

In relation to the landlord’s Application for an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 12, 2010, the onus is on the landlord to provide evidence to support his claim the tenant failed to pay the rent for February 2010.

Section 26 of the *Act* requires a landlord to provide a tenant with a receipt for rent paid in cash. Until March 2010 and at the insistence of the tenant the landlord has never provided rent receipts to the tenant. The landlord failed to submit any other evidence, such as a tenant account ledger documenting any rental payments made by the tenant to the landlord.

As the landlord has failed to provide any evidence supporting his claim the tenant did not pay rent for February 2010 and in light of the tenant's testimony that she did pay rent for February, I dismiss the landlord's application in its entirety, without leave to reapply.

As to the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 3, 2010 citing the tenant has not paid rent that was due on March 13, 2010, I find the notice to be ineffective. The notice is ineffective as it was issued to the tenant 10 days before the date the amount was due, according to the dates on the document. I therefore grant the tenant's application to cancel this notice.

The "15" day Notice to End Tenancy for Cause is ineffective for the following reasons:

- The *Act* allows for notices to end tenancies based on 10 days for unpaid rent (Section 46); 1 month for cause (Section 47); and 2 months for landlord's use (Section 49). Except under Section 56 of the *Act* these are the earliest timeframes that a landlord can give notice to end a tenancy under;
- The notice itself is undated as is required under Section 52 of the *Act*;
- A Notice to End Tenancy for Cause cannot be used to end a tenancy for landlord's use, such as having a close family member move into the rental unit as required by Section 52 ;

As a result I also grant the tenant's application to cancel this "15" day Notice to End Tenancy for Cause.

While the tenant had applied to have her filing fee recovered and in the hearing I suggested she would be entitled to the recovery of the filing fee, I note from the file that the tenant received a fee waiver; did not pay a filing and therefore is not entitled to have the landlord reimburse her. The tenant is **not** entitled to reduce any future rent by the filing fee amount.

Conclusion

As a result of the above, I find the tenancy to be in full force and effect.

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: April 15, 2010.

Dispute Resolution Officer