

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by conference call on this date to deal with the tenant's application to cancel a notice to end tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application.

Both parties appeared, gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This tenancy began on January 1, 2008 as a fixed term for one year, and then reverted to a month-to-month tenancy. Rent in the amount of \$800.00 is due on the 1st day of each month. At the outset of the tenancy, the tenancy paid a security deposit in the amount of \$400.00.

Both parties agree that rent is outstanding. The tenant stated that she does not dispute the fact that she was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She testified that she was personally served on March 8, 2010, however, the landlord testified that she was served on March 2, 2010, which is the date the notice was prepared.

The tenant testified that she lost her job and was unable to pay rent in full in October, 2009 and could only pay \$400.00 for that month. She also confirmed that rent for March and April, 2010 is also outstanding.

The landlord testified that she informed him that she receives \$812.00 per month from Employment Assistance, and that he received \$375.00 on October 14, 2009. On

November 2, 2009 he received another \$342.26 and \$342.26 on December 11, 2009. In April, 2010 he received another \$68.42, which leaves a balance outstanding for rent of \$1,931.58 to date. This is not disputed by the tenant.

The landlord further testified that he asked her about getting a room-mate, but she replied that she didn't want to. The tenant clarified that statement by saying that it is a small apartment with only one bedroom and there was no room for a room-mate.

The tenant testified that she spoke to someone at the Residential Tenancy Branch who assisted her in applying for dispute resolution, and she loves her apartment and wanted to buy some time to come up with the arrears. She further testified that prior to losing her job, for approximately a year and a half, her rent was always paid in full and on time.

The tenant stated that she recently found a possible way to come up with the outstanding rent, and the landlord agreed to allow her until the end of April to pay the arrears.

Analysis

The *Residential Tenancy Act* states that:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenancy receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Under the *Act*, where the landlord has requested an Order of Possession, I must grant one. The landlord has agreed to allow the tenant until April 30, 2010 to pay the arrears. Rent in the amount of \$800.00 will also become due on May 1, 2010, and if the tenant does not pay that amount by that date, the landlord will be at liberty to serve the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenant will have 5 days to pay the rent in full, pursuant to Section 46, above.

Conclusion

Having heard the evidence of the applicant and the respondent herein, I hereby dismiss the application of the tenant, and I grant an Order of Possession in favour of the landlord effective April 30, 2010 at 1:00 p.m. Since the tenant has not been successful with her application, I decline to award an order that the tenant recover the filing fee from the landlord for the cost of this application.

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 22, 2010.

Dispute Resolution Officer