



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated April 1, 2010 and effective April 10, 2010. The tenant's application also requested reimbursement by the landlord for the cost of the filing. Both the landlord and the tenant appeared and each gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid Rent was valid and warranted. The burden of proof is on the landlord to justify the Ten-Day Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated April 1, 2010 stating that the tenant failed to pay \$1,200.00 rent properly due on April 30, 2010, (30/04/2010 - as shown on the notice), and utilities of \$800.00 for which a written demand was purportedly made on April 30, 2010. The tenant submitted written testimony discussing various problems during the tenancy and a copy of a letter from the landlord dated April 1, 2010. No copy of the tenancy agreement or any other evidence was submitted by the landlord.

The landlord testified that the tenant paid rent in full for April 2010 but in spite of the Notice, remained in the unit beyond April 10, 2010 and the landlord was not exactly sure when the tenant had actually vacated. According to the landlord, the tenant's

possessions were seen still on the property beyond the end of May 2010. The landlord stated that as the tenancy ended, the tenant took the position that the security deposit and pet-damage deposit should be used in lieu of rent for May. The landlord stated that the landlord did not agree with this arrangement.

The tenant acknowledged that they chose to remain in the unit for the month of May 2010 vacating at the end of May. The tenant also did not dispute that rent for May 2010 was not paid because the tenant felt that the security and pet damage deposits should be allocated as rent for May 2010.

Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. According to the landlord, the tenancy agreement signed by the parties, which was not submitted into evidence, specifically stated that the rent was due and payable in advance on the last day of each month. The landlord testified that this was the reason why the Ten-Day Notice was issued on April 1, 2010 for alleged rental arrears owed for April.

However, even if I accept that rent was due on the final day of each previous month in advance of the next month under the tenancy agreement, I still find that the Ten-Day Notice was seriously flawed and could not be enforced. The Notice was issued and signed on April 1, 2010 but the date shown for when the rent was due in the top left-hand corner of the Notice, was April 30, 2010. Moreover, on the top right-hand corner of the Notice, it indicated \$800.00 utilities owed, allegedly after a written demand for payment was given on April 30, 2010. Given the above, the tenant's request that the April 1, 2010 Ten-Day Notice be cancelled must be granted on the basis that the Notice was not valid on its face being that the due date indicated for rent was 30 days *after* the

date it was signed, and the stated date that the utilities were allegedly demanded was in the future.

Despite the above, I note that the tenancy has already ended and that the tenant has willingly forfeited his right to the return of the security and pet deposits, and permitted the landlord to keep the \$1,200.00 to satisfy \$1,200.00 rent owed for May 2010.

Accordingly, I find that the tenancy ended as of May 31, 2010 and the tenant is not entitled to the return of the \$600.00 security deposit nor the \$600.00 pet damage deposits. I find that the landlord is entitled to keep the \$1,200.00 from these deposits to satisfy all rent owed for May 2010.

I make no findings in regards to the tenant's complaints about matters relating to the tenancy, nor to the landlord's testimony regarding the landlord's loss of rent or other damages incurred.

This decision and the findings above relate solely to the Ten-Day Notice and the associated rental arrears in relation to this tenancy. The landlord and the tenant are both at liberty to pursue any damages or losses against the other party stemming from this tenancy if desired in a separate application.

Conclusion

I order that the Ten-Day Notice is cancelled and of no force nor effect. Based on the testimony and evidence discussed above and the tenant's concurrence, I hereby order that the landlord retain the \$600.00 security deposit and \$600.00 pet damage deposit in total satisfaction of the \$1,200.00 rent owed by the tenant for the month of May 2010.

June 2010

Date of Decision

Dispute Resolution Officer