



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNR, OPR, MNDC, O, OLC, LRE, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord is seeking to end the tenancy, based on a one month Notice to End Tenancy for cause and a 10 Day Notice to End Tenancy for unpaid rent and lack of payment of a security deposit. The Landlord is seeking a monetary order.

The Tenant is seeking to cancel the one month Notice to End Tenancy for unpaid rent and security deposit and the 10 Day Notice to End Tenancy.

Both parties are seeking to enforce contradictory rental agreement terms based on an oral agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and to cross-examine the other party, and make submissions to me.

I note both parties submitted evidence late in this matter, which I have reviewed. I have also reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to an order of possession for the rental unit and to obtain a monetary order?

Is the Tenant entitled to an order to cancel the Notices to End Tenancy?

Background and Evidence

Pursuant to the rules of procedure for the Act, the Landlord proceeded first in the hearing and testified as to why the Tenant had been served with the two Notices to End Tenancy.

The parties agree there is no written tenancy agreement, but could not agree on any relevant term in the oral agreement.

The Landlord issued a one month Notice to End Tenancy for cause on August 9, 2010, for an effective move out date of September 13, 2010, by posting on the door, and a 10 day Notice to End Tenancy for Unpaid Rent on September 2, 2010, by personal delivery.

The Landlord testified that the Tenant began moving into the rental unit approximately July 15, 2010, and began sleeping there on July 29, 2010. The Landlord testified that she did not demand July rent, but never waived the rent for that month.

The Landlord testified that her understanding of the monthly rental amount was \$800.00 per month and that the tenancy was to last 2-3 months. The Landlord also testified that she would reduce the amount of rent by \$50.00 per month if the Tenant mowed and trimmed the lawn.

The Landlord testified that she never agreed to provide laundry facilities to the Tenant and also testified as to terms she would like to have in a tenancy agreement. The Landlord testified she accepted different payments as rent, \$200.00 in July, and \$450.00 in August. The Landlord also received \$163.00 in September and that the Tenant currently owed \$1,695.00, which included monies allegedly owed for past debts unrelated to this tenancy.

The Landlord testified that it was her intent from the beginning to have a written tenancy agreement and to charge a security deposit.

The Tenant filed an Application for Dispute Resolution on August 17, 2010. The Landlord acknowledged service of the Notice for hearing.

The Tenant testified that her understanding of the terms of the tenancy agreement was that she could move her belongings into the rental unit in July, rent was to be \$650.00 for August and thereafter the rent was to be \$750.00 per month. The Tenant testified she informed the Landlord she could not afford \$800.00 per month, and that she could

afford only \$650.00 for August as she was voluntarily leaving her former rental unit, for which rent was \$635.00 per month and rent was to be \$750.00 thereafter.

The Tenant testified that the Landlord promised to pay for utilities, cable and wireless internet, provide access to the laundry facility, and to provide storage, among other things. The Tenant testified that she has been denied access to the laundry facility and to her freezer.

The Tenant testified that the Landlord never sought to enter into a written tenancy agreement, increase the terms of the monthly rent or charge a security deposit until after a verbal altercation occurring on August 7, 2010, when the Landlord entered the rental unit without permission, in contradiction to Section 29 of the Act. I note the unsigned Addendum to the Residential Tenancy Agreement and letter to the Tenant about an inspection, both dated August 9, 2010, tend to support this testimony.

The Tenant testified that she has paid a portion of the rent for September as it was her belief she would be evicted by the date listed on the Notice.

The advocate for the Tenant testified and corroborated the testimony of the Tenant as to the events and date of altercation and the rental amount, among other things.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence and testimony of the Tenant, her advocate and documentary proof and find that this tenancy was to begin in August 2010, on a month to month basis, the rent for the rental unit was \$650.00 for the month of August 2010, payable on August 1, and thereafter, the amount of rent is \$750.00 per month, payable on the first day of each subsequent month. The Landlord may not increase the rent except as allowed under the Act in Section 42.

Under authority of Section 62 (3) of the Act, I direct the Landlord and Tenant enter into a written tenancy agreement pursuant to these terms and **I Order the tenancy agreement comply with the Act as set forth in Section 13.**

I find that a security deposit was not paid and is not payable for failure to require the same at the time of entering into the tenancy agreement with the Tenant, pursuant to Section 20 of the Act.

I direct that the Landlord not enter the rental unit until permitted to do so under the Act.

I find that that the Tenant has paid rent in full for the month of August 2010, and I require the Tenant to pay the full amount of rent as set out above for the month of September 2010, failing which the Landlord can apply section 46 of the Act to end the tenancy.

Therefore I find the Landlord's One Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid rent are both issues before me, that the same are not valid and not supported by the evidence and **I order that the Notices be cancelled and I dismiss the Landlord's Application.**

I order that the Landlord pay to the Tenant \$50.00 for the filing fee.

Conclusion

The Landlord and Tenant are directed to enter into a written tenancy agreement and the terms are to comply with the Act.

The Landlord's One Month Notice to End Tenancy and 10 Day Notice to End Tenancy are not valid and not supported by the evidence therefore, the Tenant is granted an order dismissing the Notices to End Tenancy.

The Landlord's Application is dismissed.

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: September 14, 2010.

Dispute Resolution Officer