Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   CNR

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a 10 Day Notice to End Tenancy issued by the Landlord for alleged unpaid rent.

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 have reviewed all 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 Tenant entitled to an order cancelling the Notice to End Tenancy?

Background and Evidence

This tenancy started August 15, 2009, as a fixed term tenancy for one year and continues now on a month to month basis. Monthly rent is $860.00 and a security deposit in the amount of $430.00 was paid in August 2009.

On August 20, 2010, the Landlord served the Tenant with a 10 Day Notice to End Tenancy by posting on the door, to be effective on August 29, 2010, for allegedly failing to pay rent due for August 1, 2010.

Pursuant to the rules of procedure, the Landlord proceeded first in the hearing, explaining why the Notice was issued.

The Landlord provided affirmed testimony regarding why the Tenant was given a Notice to End Tenancy, but did not supply any evidence in support of his Notice, such as a copy of the tenancy agreement or accounting records.

The Landlord testified that the rent is paid late most months, but that he never had a problem with that as long as the full amount was paid by the end of the month. The Landlord further testified that he received a partial payment for the May 2010, rent and spoke to the Tenant's brother/roommate in July about the unpaid rent for May in the amount of $430.00. I note that the brother's name is not listed on the tenancy agreement, pursuant to testimony.

The Landlord testified he received the full amount of rent for August and September, 2010, and that the Tenant was current in rent except for the alleged partial payment in May. The Landlord further testified that he had accepted cash payments for these two months, without including the term "For Use and Occupancy" on the receipts.

I note the Landlord provided no evidence in support of his claim and I further note he could not provide specific details of the tenancy agreement, security deposit or payment dates.

The Tenant provided affirmed testimony that the rent had been paid in full each month, that some of the rent was by way of government assistance and the remainder by personal cheque or cash.

The Tenant further testified the Landlord did not approach her about unpaid rent for May until early August, at which time she requested an accounting. The Landlord supplied two methods of accounting, which Tenant testified neither she nor an accounting professional could understand. The Tenant heard nothing further until the Notice to End Tenancy was posted. The Tenant supplied these accounting sheets into evidence.

The Tenant supplied evidence of government assistance payments to the Landlord throughout 2010 for rent, and after reference was made by both parties, I allowed late submission of a faxed copy of the receipt for the August rent.

The witness for the Tenant testified that he had no conversation with the Landlord about past due rent and stated that the only time he knew of any past due rent was in January 2010, before he moved into the rental unit.

<u>Analysis</u>

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

In considering the acceptance of late evidence, rule 11.5 of the *Residential Tenancy Branch Rules of Procedure* state that a party may request, at the dispute resolution proceeding, that the Dispute Resolution Officer accept any evidence that was not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding as required by the Rules of Procedure and must satisfy the Dispute Resolution Officer that the evidence is relevant.   I find the evidence submitted by the Tenant relevant to the proceeding due to the confusion of the testimony concerning payments, amounts, dates and wording of the receipts.

I find that the Landlord has not established proof that the Tenant has missed any payment of rent and has not provided sufficient evidence and testimony necessary under the Act to end the tenancy.

Section 11 of the Residential Tenancy Guidelines provides that if a landlord accepts the payments of rent for the period after the effective date of the Notice, then the intention of the parties will be an issue. According to the guidelines, intent can be established by evidence when:

- o   The receipt shows the money was received for use and occupancy only
- o   The landlord specifically informed the tenant that the money would be for use and occupation only
- o   The conduct of the parties indicates intention.

I find that the Landlord did not issue a receipt stating for use and occupancy only or advise the tenant upon accepting the payment that this was for "use and occupancy only."

I also find that the conduct of the Landlord in accepting full rental payments for August and September indicated to the Tenant that the tenancy was reinstated.

Given the above I find the tenancy was reinstated. Therefore I find the One Month Notice to End Tenancy for Unpaid rent issued by the Landlord is not valid and not supported by the evidence and **I order that the Notice be cancelled**.

Conclusion

The Landlord's One Month Notice to end Tenancy is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

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 17, 2010.

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Dispute Resolution Officer