

DECISION

Dispute Codes CNR, OLC, MNDC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order cancelling the Ten Day notice to End Tenancy, a monetary order under the Act or tenancy agreement, plus orders for the Landlord to comply with the Act and tenancy agreement and to make repairs to the rental unit.

The Tenant served the Landlord with the Notice of Hearing and the Application in person on August 20, 2010, which was acknowledged by the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to 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.

Issue(s) to be Decided

Is the Tenant entitled to the relief sought in her Application, including an Order cancelling the Ten Day Notice to End Tenancy?

Background and Evidence

These same parties were involved in a dispute resolution process earlier this year, with the Decision being placed into evidence by both parties.

By the terms of that decision, the Tenant was granted an ~~allowance~~ **compensation** of \$3,600.00 for loss of use and enjoyment and the Tenant's rent was retroactively reduced by \$100.00 per month to now be \$700.00 per month until the Landlord made an Application for Dispute Resolution. I note that the Landlord was also ordered to pay

to the Tenant all rent paid in excess of \$780.00 per month since the rent was increased to that amount. This amount was undetermined in the Decision and no evidence or testimony was submitted which would help determine that amount and I make no findings as to that amount.

The Decision was issued on May 27, 2010, which would have made the effective day of the rent reduction of \$700.00 on June 1, 2010. The Tenant provided evidence that she paid \$780.00 in June, 2010.

Based on the affirmed testimony and evidence, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on August 18, 2010, by posting on the door. The effective date indicated on the Notice is August 28, 2010 and I note the effective date is ineffective and automatically corrects under the Act to August 31, 2010 to account for Service Deemed Effective time. I further note that the Tenant filed her application for dispute resolution within the time in accordance with the Act.

Pursuant to the rules of procedure for the Act, the Agent for the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a Ten Day Month Notice to End Tenancy.

The Agent for the Landlord gave affirmed testimony that the Tenant did not pay rent for the month of July, which caused the Notice to be issued, or for August, September and October. The Tenant confirmed that she did not pay for these months.

The Agent for the Landlord testified that he had tried on numerous occasions to repair the rental unit, as directed in the previous Decision, but was unable to do so based on the lack of cooperation between the tradespersons and the Tenant. I note that the Landlord did not provide any evidence or testimony corroborating these attempts.

The Tenant testified that as she was granted an order for monetary compensation of \$3,600.00 in the previous Decision, she understood that to mean she didn't have to pay rent until that amount was satisfied. The Tenant further testified that the Dispute Resolution Officer in the previous hearing said she did not have to pay rent. When queried, the Tenant could not direct me to the language in the Decision regarding her suspension of rental obligation.

The Tenant further testified she fully cooperated in having the repairs done, calling back the tradespersons, but with little or no prompt response. The Tenant acknowledged three items on the list of ten repairs were done at different times in September.

Analysis

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

The Tenant has not paid the outstanding rent and further acknowledged she did not pay rent for the months of July, August, September and October at the rate of \$700.00 per month.

I find that the previous decision of the Dispute Resolution Officer was clear in its language that the Tenant's obligation to pay rent continued at the **reduced** rate of \$700.00 per month until further Decision and **upon fully addressing the previous Decision I do not accept** the testimony of the Tenant that she was told by that Officer in the previous hearing that she did not have to pay rent.

I find that the Landlord is **not** entitled to an order of possession. ~~effective **October 31, 2010, at 1:00 p.m.** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.~~

~~As the tenancy is ending and rent reduction will no longer be applicable, I find that the Tenant has established a **remaining** total monetary claim of **\$880.00**, comprised of the previously determined amount of \$3,600.00 indicated above, plus \$80.00 for the excess payment in June, less \$2,800.00 for the ~~outstanding~~ reduced rent for July, August, September and October.~~

I find that the Tenant may continue to deduct this amount from the \$700.00 reduced rate of rent of the previously ordered until satisfied.

Based on these findings, I find that the 10 Day Notice to End Tenancy issued in this matter is not valid and I order it to be cancelled. The Notice is of no force or effect and I order the tenancy continue until ended in accordance with the Act.

The previous Decision concerning the Landlord's obligation to make the ordered repairs is still in full force and effect.

~~I grant the Tenant an order under section 67 for the amount of **\$880.00**.~~

~~This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.~~

Conclusion

~~The Tenant failed to pay outstanding rent and the Landlord is granted an Order of Possession granted the Landlord is hereby cancelled.~~

The Landlord's 10 Day 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.

The Tenant is still owed \$880.00, and may continue to deduct this amount from the reduced rate of rent.

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*.

Date Corrected: October 12, 2010

Dated: October 07, 2010.

Dispute Resolution Officer