



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, CNR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to cancel a One Month Notice to End Tenancy for Cause and Amended Application to cancel 10 Day Notices to End Tenancy for unpaid rent.

The Tenant and Advocate for the Landlord 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 an Order cancelling the One Month Notice to End Tenancy for Cause and the 10 Day Notices to End Tenancy?

Is the Tenant entitled to recover the filing fee?

Background and Evidence

Pursuant to the rules of procedure for the Act, the Advocate for 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 other than that the tenancy was on a month to month basis.

The Landlord issued a One Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on September 23, 2010. The cause as stated by the Landlord alleged that the Tenant seriously jeopardized the health and safety or lawful right of the Landlord.

The Landlord also issued 2 Ten Day Notices to End Tenancy for Unpaid Rent, according to testimony. I note that the Notices were not submitted into evidence.

The Advocate for the Landlord supplied evidence and gave affirmed testimony that the tenancy started on August 1, 2010, and the monthly rent was \$700.00 per month, with a contra agreement that the Tenant would provide contracting services for the Landlord, to be totalled at the end of the month and the balance dealt with. The utilities were included in the rent.

The Advocate for the Landlord testified that that the Tenant provided contracting services immediately for the rental unit.

The Advocate for the Landlord alleged that the Tenant had a personal relationship with the Landlord's daughter-in-law and was forced to issue the Notice as she feels uncomfortable around the Tenant, having the Tenant around was unbearable and that her health was compromised. The Advocate further testified that the Landlord is under a doctor's care for the stress of the situation. I note that there was no evidence submitted in support of the allegations concerning the medical condition.

The Tenant testified that the tenancy began on July 3, 2010, that the agreed upon rent was \$700.00 per month and in return for light gardening and light repair, the rent would be decided at the end of the month after a total of any work he had performed. The Tenant further testified no matter whether work was done or not, the rent would be paid on the last day of the month. He further stated he never agreed to construction as part of the tenancy agreement, but that he was forced to undergo a major project almost immediately after moving in with the bathroom repair. Thereafter, he informed the Landlord that he would not do any further construction work and would pay \$700.00 on the last day of the month as originally agreed.

The Tenant in his affirmed testimony denied having the personal relationship and that if the Landlord's health suffered, which he denied, it was due to the false statements given to her by her son, and not he, the Tenant.

The Tenant testified that the Landlord was aware he had three children, agreed he could have his children visit and reside with him and that she had no problem with this.

The Tenant testified that the Landlord has stopped communicating with him and accepting his cash payments, so he has had trouble delivering his rent payments.

Analysis

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

Dealing with the rent, the onus is on the Landlord to prove the amount of rent payable and agreed upon at the commencement of the tenancy, as well as other terms. The Landlord did not prepare a tenancy agreement as required under the Act, and therefore

is unable to prove the day of the month rent is payable or other terms of the tenancy agreement. The parties agree that rent was \$700.00 per month, but disagreed on the contra agreement terms. Without that proof, the Tenant's evidence will be the acceptable evidence. I therefore, **find** as follows:

1. The tenancy began on July 3, 2010, and is on a month to month basis.
2. The amount of rent payable is \$700.00 per month payable on the **last** day of each month rent is due. For instance, the October 2010 rent is due on October 31, 2010. Tenant may perform light gardening and light repair, and the Tenant is entitled to a contra agreement at the end of the month for an adjustment on his monthly rent. If the parties cannot agree on the rate of adjustment, the work will be paid at \$30.00 per hour. I further find that if there is no light gardening or light work done by the Tenant, the rental amount is \$700.00.
3. All utilities are included in the monthly rent.
4. The Tenant is allowed to have his daughter reside with him and his other children visit with him.
5. The Landlord is ordered to give the Tenant an alternate location to which the Tenant may deliver his rent.

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.**

Once the Tenant made an Application to dispute the Notice, the Landlord became responsible to prove the Notice to End Tenancy is valid.

In dealing with the One Month Notice to End Tenancy, with the evidence before me, I cannot find that the Tenant seriously jeopardized the health and safety or lawful right of the Landlord.

Someone's personal conduct, real or alleged, does not seriously jeopardize someone's health and I have no authority under the Act to monitor, control or direct someone's behaviour.

The Tenant's October rent is not due until October 31, 2010, and therefore, along with the above, I find the Landlord submitted insufficient evidence to prove any of the causes in the Notices to End Tenancy.

Based on these findings, I find that the one month Notice to End Tenancy and the 10 Day Notices to End Tenancy for unpaid rent issued in this matter are not valid and I order they be cancelled. The Notices are of no force or effect and the tenancy will continue until ended in accordance with the Act.

I find that the Tenant has succeeded in his Application and that he should recover the filing fee from the Tenant. I direct that he withhold \$50.00 from the October 31, 2010, payment of rent.

Conclusion

The Landlord and Tenant are directed to enter into a written tenancy agreement as directed above 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 Tenant is allowed the filing fee and may withhold \$50.00 from the October 31, 2010, payment 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*.

Dated: October 25, 2010.

Dispute Resolution Officer