



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent and to obtain a Monetary Order for \$170.00.

Service of the hearing documents, by the Tenant to the Landlord, was sent via registered mail on November 6, 2010. Mail receipt numbers were provided in the Tenant's verbal testimony. The Agent confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant failed to pay her rent in accordance with the *Residential Tenancy Act*?
2. Is the 10 Day Notice to End Tenancy valid and upheld?
3. Is the Tenant entitled to a monetary order for \$170.00?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term written tenancy agreement effective May 1, 2010 and set to switch to a month to month tenancy after October 31, 2010. Rent is payable on the first of each month in the amount of \$700.00.

As per the written tenancy agreement the Tenant was to pay a security deposit of \$350.00 by May 31, 2010.

The Agent and Landlord provided testimony that the Tenant refused to pay her full rent for June and July 2010 and that she had an accumulated balance of \$460.00 by the first of October 2010, so a 10 Day Notice to End Tenancy was issued and posted to the Tenants door on October 25, 2010 at 4:30 p.m. The Agent referred to the tenant ledger they provided in their documentary evidence which supports the Tenant failed to make a separate payment towards her security deposit, as per the tenancy agreement, so her first rent payment is displayed as a payment towards her security deposit.

The Tenant testified and confirmed she short paid her rent by \$170.00 for the months of June and July 2010 and argued that she had a verbal agreement with the Landlord to do this. She stated that the Landlord failed to provide her with a move in bonus for three months of free cable service and her cable bill was \$170.00 per month. When I asked why she would only deduct two months if the offer was for three she stated that she forgot to make the third deduction. She referred to the credit issued on her tenant ledger for \$150.00 May 1, 2010, and questioned why the Landlord would give her that credit if she was not entitled to the cable promotion. She also stated that she has never paid \$780.00 towards rent as listed as the August 3, 2010 payment. She confirmed the Landlord gave her receipts for her cash payments however she could not find the one for August 2010.

The Landlord advised that she did not have a verbal agreement with the Tenant for her to reduce her rent payment rather the Tenant attended to pay her rent and told the Landlord that is the amount she is paying. The Landlord stated that she does not have the authority to reduce a Tenant's rent so she would never enter into such an agreement. She explained that the Tenant was given the opportunity to apply for the cable incentive but that the Tenant failed to complete and return the application form and told the Landlord that she was an existing cable customer and was getting her cable transferred.

The Agent advised the \$150.00 was offered to the Tenant because she kept arguing the point with them about her previous rental unit and not getting the cable incentive. So the Agent issued the \$150.00 credit because that is their cost for 3 months of the incentive. It's their deal with the cable company to only pay \$50.00 per month for each tenant they sign up. She informed the Landlord of this credit and expected the Landlord to inform the Tenant. The Agent confirmed there was a hydro charge of \$64.72 put on the Tenant's account and was reversed when the Landlord received notice from hydro that the amount was credited off of the Landlord's account. The Agent testified that they appeared today to request a Monetary Order of \$460.00 and an Order of Possession effective November 30, 2010.

The Landlord stated she told the Tenant about the credit but the Tenant was upset because her cable bill is \$170.00 per month not \$50.00 per month. She also confirmed a receipt was issued for the August payment and after searching through her receipt book she confirmed it was receipt # 338728 and it was issued on August 2, 2010 for \$780.00 received for rent.

Analysis

At the onset of the hearing the Tenant clarified that she was seeking a monetary order for \$170.00 and that she was not applying for the return of her security deposit as noted on the application. I allowed the Tenant to amend her application to request a monetary order as the Tenant had indicated this amount on the application and the Landlord did not dispute the amendment. After careful review of the testimony and evidence, I find the Tenant provided insufficient evidence to prove she was entitled to a monetary order of \$170.00 from the Landlord; an amount that she said was equal to one month of her cable bill. Therefore I dismiss the Tenant's request.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. There is no provision under the Act which allows a tenant to deduct money from their rent because they disagree with the amount offered to them from a rental incentive.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Upon review of the 10 Day Notice to End Tenancy issued October 25, 2010, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice and therefore I dismiss the Tenant's application to cancel the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing. Based on the above, I hereby approve the Landlord's request for an Order of Possession effective November 30, 2010.

I cannot grant the Landlord a monetary order as requested because this hearing was convened to hear the Tenant's application for dispute resolution. The Landlord is at liberty to file their own application if they wish to pursue their request for a monetary order.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord's decision will be accompanied by an Order of Possession effective November 30, 2010, after service on the Tenant. This Order must be served on the Tenant and may be filed in Supreme Court and enforced as an Order of that Court.

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: November 26, 2010.

Dispute Resolution Officer