



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was reconvened to deal with the Direct Request Application for Dispute Resolution by the Landlord for an order of possession and a monetary order.

The Direct Request had been reconvened to a participatory hearing because the Landlord did not provide an accounting of the alleged rent arrears and it appeared that late fees were included in the alleged rent arrears. The previous Decision of January 17, 2011, issued by the Residential Tenancy Branch, determined at the Direct Request proceeding that the Landlord was required to provide evidence to determine if the 10 Day Notice was an effective Notice to end the tenancy.

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

I find the Tenant was properly served the evidence of the Landlord.

Issue(s) to be Decided

Did the Landlord provide sufficient evidence to determine if the 10 Day Notice to End Tenancy was effective?

Is the Landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

The Landlord issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 16, 2010, delivered personally.

Following the previous Decision, the Landlord supplied a 2 page document into evidence, with a copy to the Tenant, entitled "Rent Arrears."

The Landlord's Agent testified that the problem with the rent balances started with the Tenant's alleged late payments of rent beginning in August 1, 2010, when the Landlord began assessing late fees of \$2.00 per day and NSF charges, of which the Tenant was notified by a posting on the premises.

I heard testimony from the Landlord's Agent that it soon became clear that the tenants on the premises, including the Tenant, were confused as what was owed and that the late fees were later removed from the account balances of all tenants, including the Tenant.

When queried about the document submitted into evidence, I heard testimony from the Landlord's Agent that the figures used were based upon the deposit book, reflecting cash and cheque payments, with the late fees and penalties removed.

The Tenant testified that the first time she was ever late on rent was on November 1, 2010, but that she paid the full balance in November. I heard testimony from the Tenant that there were problems with her assistance payments again in December, but paid the amounts owed for rent by December 21, 2010.

I heard testimony from the Tenant that she was unaware that her rent cheque for January was returned NSF, but when alerted, she made payments on the unpaid balance, including late fees and charges. The Tenant further testified that there was a small amount of unpaid rent, which she was prepared to pay in cash, but did not as she was not certain she owed anything further.

I heard testimony from the Tenant that she had every receipt from every payment made to the Landlord, which shows she was current in rent. Upon query, the Tenant read from some of the receipts.

Analysis

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

In the circumstances before me, the Landlord supplied deficient and inconclusive documentary evidence which I find does not establish the amount of rent owed, if any, by the Tenant. For instance, the document submitted did not reflect payment dates and also listed late and NSF fees. It was unclear to me if the Landlord was still attempting to include these fees with unpaid rent.

The Tenant supplied credible testimony and read from the receipts provided her by the Landlord. Additionally, the Landlord failed to support the document submitted with receipts of the Tenant's payments. Therefore I find the document listing the Tenant's alleged overdue rent to be unsubstantiated and that the Landlord has not proven the Notice to End Tenancy was valid.

Conclusion

Based on the aforementioned lack of proof of overdue rent, I find the 10 Day Notice to End Tenancy does not meet the form and content of section 46. Therefore, the 10 Day Notice to End Tenancy is invalid and of no force or effect. Having found the 10 Day Notice issued December 16, 2010, to be invalid, I hereby **dismiss** the Landlord's application, **without leave to reapply**, with the effect that the tenancy continues until otherwise ended under the tenancy agreement or Residential Tenancy Act.

The Tenant is cautioned that rent is due and payable in full on the 1st day of each month, failing which, the Landlord is at liberty to issue another 10 Day Notice for Unpaid Rent seeking to end the 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: February 01, 2011.

Residential Tenancy Branch