



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, CNC, MT

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application to cancel a 10 day Notice to End Tenancy for non-payment of rent, and a one month Notice to End Tenancy for cause.

Background and Evidence

The tenant has not paid the rent for March 2011, and on March 3, 2011 she was served a 10 day Notice to End Tenancy for non-payment of rent, and a one month Notice to End Tenancy for cause.

The landlord testified that:

- The tenant did not pay the rent for March 2011 and to date it is still outstanding.

- The tenant has made some proposals to pay the rent however no rent has actually been offered with those proposals until yesterday, and even then it was only a portion of the rent that was offered.
- It's well past the rent due date and they no longer wish to continue this tenancy.

The landlords therefore request that the 10 day Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that:

- She agrees that she did not pay the rent when it was due however she has made numerous proposals to the landlords to pay that rent, however the landlords have not accepted any of her proposals.
- She agrees that one of her proposals was unreasonable however she feels her other proposals have been valid attempts to resolve the issue of rent payment.
- Her most recent proposal was yesterday when she offered to pay \$221.00 right away and offered to pay the balance of the rent by March 31. Again the landlords rejected this proposal.

The tenant therefore asks that, since the landlords will not accept her rent payment proposals, the Notice to End Tenancy be cancelled and this tenancy be allowed to continue.

Analysis

It is my decision that I will not cancel this Notice to End Tenancy.

Section 46 of the Residential Tenancy Act states:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In this case the tenant has not paid, or even offered to pay the full overdue rent within the five day time limit and since the full rent is outstanding there are no reasonable grounds for me to set this notice aside.

The tenant has requested that I set this notice aside because the landlord refused to accept a payment plan; however the landlord does not have to accept a payment plan, rent is due on the first of the month and if it is not paid on the first of the month the landlord has the right to end the tenancy.

Therefore this tenancy ends pursuant to the 10 day Notice to End Tenancy and there is no need for me to make a finding on the validity of the one month Notice to End Tenancy.

Conclusion

The tenant's application is dismissed without leave to reapply and have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

At the conclusion of the hearing the landlord and tenant came to the following agreement:

The landlord stated that if the tenant pays the full outstanding March 2011 rent today March 24, 2011, and the full April 2011 rent on April 1, 2011(for use and occupancy only), the landlords will allow the tenant to stay in the rental unit to the end of April 2011 and will not enforce the Order of Possession until that time.

The tenant agreed to pay the full March 2011 rent today March 24, 2011, and agreed to pay the full April 2011 rent on April 1, 2011(for use and occupancy only), and agreed to vacate the rental unit on April 30, 2011.

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: March 24, 2011.

Residential Tenancy Branch