



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC, O, FF
 CNL, MNDC, FF

Introduction

This hearing dealt with two applications by the tenant. The first application is to cancel a 10 day notice to end tenancy for unpaid rent, for a monetary order for money owed or compensation due to damage or loss, other and recovery of the filing fee. The second application is to cancel a two month notice for landlords use of property, for a monetary order for money owed or compensation due to damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started December 6, 2007 with rent of \$1000.00, the tenant paid a security deposit of \$500.00. On February 2, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. On March 15, 2011 the landlord served the tenant with a 2 Month Notice to End for Landlord's Use of Property: the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

File 769513

The tenant testified that she has made many rent overpayments throughout 2008, 2009 and 2010, that she does not owe the landlord rent and has a payment overage due to her. The tenant stated that she pays her rent in cash as the landlord's request. The tenant has submitted into evidence, receipts for 2010 however the tenant was not provided receipts on a monthly basis by the landlord for 2008 and 2009. The tenant believes that she has overpaid rent in the amount of \$1720.00 for 2010 and that in total over the three years she has overpaid rent in the amount of \$2200.00. The tenant is seeking \$2200.00 compensation for the overpayment of the rent and cancellation of the 10 day notice to end tenancy for unpaid rent.

The landlord stated that they met with the tenant in early February to clarify the rent owed and at that time made the determination that they would not seek any unpaid rent for 2008 and 2009. The landlord stated that for 2011 the tenant owes the landlord \$2600.00 in unpaid rent for the following: February 2011 - \$600.00, March 2011 - \$1000.00 and April 2011 - \$1000.00. The landlord did accept a rent payment after issuance of the February 2, 2011 notice as at that time the relationship between the parties was amicable and all parties wished the tenancy to continue. The landlord stated in this hearing that she understands that acceptance of rent without providing the proper receipt per the *Act* nullifies the notice and reinstates the tenancy. The landlord requested a monetary order for the unpaid rent and it was explained to the landlord that they would be required to bring their own application forward to make a monetary claim.

As neither party has submitted complete and logical documentation in regards to the over/under payment of rent for 2008, 2008 and 2010, both parties agreed in this hearing that the Dispute Resolution Officer would review all evidence and make the most accurate determination possible.

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The tenant stated that there was a flood in the laundry room in August 2010 and that the tenant's items which were stored in the garage were damaged and had to be thrown out. The tenant stated that she lost shoes, clothing towels and bedding due to the water damage. The tenant stated that after the leak the landlord replaced the washing machine and a water supply pipe to the laundry room. The tenant is seeking \$350.00 in compensation for the damaged items.

The tenant in this application has applied to have the 2 month notice to end tenancy for landlord's use of property set aside. The tenant stated in this hearing that she no longer wishes to remain on the property and is looking for new housing. The tenant did not provide evidence that the landlord was not acting in good faith regarding the notice for landlord's use of property only but stated that she did not believe that the landlord's daughter would be moving in to the rental unit.

The landlord stated that she believed the flood to be the tenant's fault for not properly keeping the wash tub drain for the washing machine clear. The landlord stated that her husband had been involved with replacement of the washing machine and flood in the rental unit. The landlord stated that she did not know what, if anything of the tenant's was damaged.

The landlord testified that their daughter would be occupying the rental unit after the tenant vacated in May 2011 and it was clarified for both parties in this hearing that the end of tenancy date on the notice, per the *Act*, self corrects to May 31, 2011 and that is the day that the tenancy will end.

Analysis

File #####

As neither party has submitted thorough documentation for rent payments received in 2008 and 2009 it is not reasonable that a viable determination can be made regarding and over or under payment of rent for these years. It is also not viable to determine payments from the tenant's bank withdrawal statements as there is no way to verify where a particular withdrawal went. The tenant has submitted receipts for 2010 rent payments totalling \$13,620.00 which results in an overpayment of \$1620.00 for 2010.

Based on the documentary evidence and testimony of the parties I find that the tenant is entitled to a limited award for overpayment of rent in the amount of \$1620.00.

As the landlord has taken payment for rent after issuance of the February 2011 notice and did not provide the tenant with the proper 'for use and occupancy' receipt per the Act, the 10 day notice to end tenancy for unpaid rent is hereby set aside and the tenancy continues in full force and effect.

File #####

The tenant is seeking \$350.00 compensation for damage or loss due to the flood in the garage where the tenant lost shoes, clothing towels and bedding due to the water damage. The tenant has not submitted any receipts for purchase or replacement of these items and the evidence submitted notes that a *'load of stuff, which appeared to be household things damaged by water'*, was taken to the landfill. The landlord did not deny that there had been a flood or that the tenant had items damaged. The landlord does contend that the tenant was directly responsible for the flood.

Based on the documentary evidence and testimony of the parties I find that the tenant is entitled to a limited award for compensation for damage or loss in the amount of \$175.00.

Based on the testimony of the landlord I find that the landlord is acting in good faith regarding the 2 month notice to end tenancy for landlord's use of property and that their daughter will be occupying the rental unit at the end of the tenant's tenancy.

As the tenant has had some success in application ##### they are entitled to recover \$25.00 of the \$50.00 filing fee.

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The tenant at this time currently owes the landlord \$2600.00 in unpaid rent for the following: February 2011 - \$600.00, March 2011 - \$1000.00 and April 2011 - \$1000.00.

The tenant has been awarded a total of \$1845.00 in this application and the landlord is currently owed \$2600.00 in unpaid rent. With the offset of these two amounts the tenant

is left with a balance of \$755.00 of unpaid rent owing the landlord for the months of February, March and April 2011.

Both parties are aware that the tenant will be entitled to one month's rent compensation for the 2 month notice to end tenancy for landlord's use of property.

Conclusion

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the 10 Day Notice to End Tenancy for Unpaid Rent. Accordingly, the 10 Day Notice To End Tenancy For Unpaid Rent is hereby set aside and the tenancy continues in full force and effect.

The landlords 2 Month Notice to End Tenancy For Landlord's Use Of Property is in effect with the result that the tenancy will end on May 31, 2011.

The tenant has been awarded \$1620.00 for an overpayment of rent and \$175.00 for compensation for damage or loss and recovery of \$50.00 the filing fees for a total monetary award of \$1845.00.

As the tenant currently owes the landlord \$2600.00 in unpaid rent, the two amounts will be offset resulting in a balance of \$755.00 unpaid rent due to the landlord.

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: April 4, 2010

Residential Tenancy Branch