



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for damage or loss under the Act and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

In the course of this proceeding and upon review of the tenant's application, I determined that I would not deal with all the dispute issues the tenant had placed on her application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside, or cancel the landlord's Notice to End Tenancy for unpaid rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on June 2, 2011, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2010; the parties confirmed that a previous decision was issued that determined this was a month-to-month tenancy.

A deposit in the sum of \$750.00 was paid at the start of the tenancy.

The tenant confirmed receipt of a 10 Day Notice ending tenancy issued on June 2, 2011, posted to her door on that date.

The tenant confirmed she has not paid June, rent owed. The tenant testified that there has been a dispute over work she completed on the unit and that she was not required to pay June rent owed. The dispute predates their previous hearing held in April, 2011. The tenant stated that the agreement in relation to non-payment of rent for June was made via a verbal agreement.

The landlord disputed this and stated rent was due on June 1, 2011, as indicated by the Notice issued to the tenant.

The tenant stated she is moving out of the unit by July 1, 2011.

The landlord requested an Order of possession.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the tenant has failed to provide any evidence that she has been relieved of paying June rent owed. If the tenant had a dispute with the landlord over money owed the tenant possessed the right to submit an application requesting compensation.

Section 26(1) requires a tenant to pay rent when it is due, unless they have a right under the Act to do otherwise. The tenant provided no evidence of any agreement relieving her of the requirement to pay the rent as set out in the tenancy agreement. The tenant stated that there has been a dispute in the past over work she completed in the unit and she had been given verbal permission to complete work on the unit.

During the hearing I explained that the tenant has a right to submit an application requesting compensation; however, when the tenant received the Notice ending tenancy the tenant failed to pay the rent due within five days and chose to dispute the Notice.

The tenant has failed to provide any evidence that altered the terms of the written tenancy agreement, in relation to payment of rent and the landlord has denied there was any agreement relieving the tenant of her responsibility to pay rent on June 1, 2011. Therefore, I find, on the balance of probabilities that the tenant owed rent in full on June 1, 2011. In the absence of any written agreement that altered the terms of the tenancy agreement, I find rent was due on the first day of the month. When terms are in dispute I find it is the written agreement that carries weight.

Section 55(1) of the Act provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's Application to cancel the Notice and, based on the landlord's request, I have issued an Order of possession effective 2 days after service to the tenant.

I have made no finding in relation to any dispute for compensation by the tenant.

Conclusion

As I have determined that the tenant has failed to pay June, 2011, rent and find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on June 2, 2011, is of full force and effect.

Based upon the oral request of the landlord I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act; effective 2 days after service to the tenant.

The tenant's Application for Dispute Resolution in relation to compensation is dismissed with leave.

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: June 28, 2011.

Residential Tenancy Branch