



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day Notice to End Tenancy for unpaid rent.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the Notice to End Tenancy?

Background and Evidence

The rental unit consists of an older detached home situated on an acreage. The landlord's agent testified that she does not have a written tenancy agreement. She stated that she was hired to manage the tenancy in July, but that the tenancy started in June 2011. Rent was \$800.00 and she stated that the tenant did not pay the \$400.00 security deposit. She stated that the tenant has since paid the \$500.00 outstanding rent for July but that he has not paid August rent and that to date the tenant owes \$1200.00 in total.

The tenant testified that there was never any mention of a damage deposit at the start of the tenancy; he stated that he did work on the house in lieu of the deposit, and that it is not until the landlord's agent took over the tenancy that the security deposit became

an issue. He said that he has not paid it yet because a proper move-in inspection was not conducted and because he does not get receipts from the landlord. He argued that he paid rent for August in cash. The tenant said that it was a mistake to move into this property and that he is actively looking to move out.

The parties were provided an opportunity to resolve this matter at the hearing; however they were not successful in reaching an agreement. During the hearing the landlord made a request under section 55 of the Act for an Order of Possession. Under that provision, I must issue an order of possession if I uphold the notice to end tenancy.

In his documentary evidence, the tenant provided a copy of the landlord's 10 Day Notice to End Tenancy issued on July 6th, 2011, and the 1 Month Notice to End Tenancy issued on July 20th, 2011 for failing to pay the security deposit. The latter notice was served after the application date for this dispute and is not part of the tenant's application for dispute resolution, nor is it relevant to the facts before me. The landlord is at liberty to submit her own application with supporting evidence for an Order of Possession concerning that notice, or for the alleged unpaid rent for August.

Analysis

The parties' testimony was contradicted in almost every particular. I do not accept that the stated amount in the 10 Day Notice to End Tenancy is a correct statement of the amount of rent outstanding; the evidence indicates that \$400.00 concerns the security deposit, and \$500.00 concerns the unpaid rent for the sum of \$900.00. I am satisfied on the evidence that the landlord had grounds to issue the notice, however on the parties' testimony the rent portion of \$500.00 was paid on time by the time of this hearing. Therefore the 10 Day Notice to End Tenancy is of no force or effect.

Conclusion

The 10 Day Notice to End Tenancy is set aside. The tenancy will continue; however I hereby order the landlord to complete a written tenancy agreement in accordance with the Act forthwith; to complete a move-in inspection report; to issue receipts for rent paid in cash; and for the tenant to comply with the landlord's right to enforce the tenancy in accordance with the Act.

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: August 10, 2011.

Residential Tenancy Branch