



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MDSD, AS RR, OPT, FF

Introduction

This hearing dealt with the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary order, to recover the security deposit, for an order of possession, to assign or sublet the rental unit, for a rent reduction, for an order of possession for the rental unit and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 5, 2011, the Landlord did not appear. The Tenant testified that the mail was sent to the address at which the Landlord resided, provided a tracking number and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the Landlord's absence.

The Tenant gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form.

I have reviewed the only evidence submitted by the Tenant, which is the first page of a 2 page 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The Landlord did not submit evidence.

Issue(s) to be Decided

Is there a basis to cancel the Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The Tenant testified that there was a written tenancy agreement, but that the Landlord has never provided her a copy.

The Tenant testified that the tenancy started on November 1, 2009, for a one year fixed term, continues now on a month to month basis, monthly rent is \$1,000.00, and the Tenant paid a security deposit of \$500.00 at the start of the tenancy.

The Tenant stated she received the Notice, dated August 2, 2011, on or about August 2, 2011, which listed rent owed of \$1,000.00 and unpaid utilities of \$197.02.

The Tenant stated that she does not owe rent as she paid the rent in full by cheque on August 1, 2011, and that the utilities are paid through the bank, shared with the upper tenants.

As to the Tenant's claim for a monetary order for \$2,700.00, the Tenant testified that the Landlord has caused her to suffer a loss of her quiet enjoyment through physical assaults and harassment.

As to the Tenant's claim for an order of possession, this claim was filed in the event the Landlord was granted an order of possession.

As to the Tenant's claim for a rent reduction and authority to assign or sublet, the Tenant seemed to lack understanding as to what these claims meant. The Tenant provided no testimony or evidence concerning these claims.

Analysis

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

In the absence of the Landlord, who did not appear or submit evidence, the Tenant's testimony will be the preferred evidence.

I accept the Tenant's testimony that she did not owe rent or utilities at the time the Notice was issued and does not owe rent currently.

I therefore allow the tenant's Application for Dispute Resolution, and **I order that the 10 Day Notice to End Tenancy, dated August 2, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues until it may legally end.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the Tenant in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As to the Tenant's claim for a loss of her quiet enjoyment, the Tenant provided no evidence or clear testimony to support this claim and I therefore **dismiss** her claim for \$2,7000.00.

As to the Tenant's claim for recovery of her security deposit, the tenancy will not be ending and this matter is premature. I therefore **dismiss** her claim for return of her security deposit.

As to the Tenant's claim for an order of possession, the Tenant will be retaining use and possession of the rental unit as I have cancelled the Notice. I therefore **dismiss** her claim for an order of possession.

As to the Tenant's claim for authority to sublet or for a rent reduction, the Tenant did not pursue these requests in the hearing. I therefore **dismiss** the Tenant's claim for authority to sublet or for a rent reduction.

As the Tenant was successful in her application seeking cancellation of the Notice, I award the Tenant recovery of the filing fee. The Tenant may deduct **\$50.00** from a future month's rent payment in satisfaction of this award.

Conclusion

The Tenant is granted an order cancelling the 10 Day Notice to End Tenancy, dated August 2, 2011.

The remaining claims of the Tenant are dismissed.

The Tenant is awarded the filing fee of \$50.00, which she may deduct from a future month's payment of rent.

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: September 01, 2011.

Residential Tenancy Branch