



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, MT

This hearing dealt with the tenant's application for additional time to make an application to dispute a Notice to End Tenancy for Unpaid Rent and for other relief.

The tenant and the landlord's agents appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in documentary form, and to respond each to the other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence timely received and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue:

The tenant made an application as a result of receiving a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and asked for additional time to dispute that Notice. However, the tenant failed to mark the box on the application seeking cancellation of the Notice. After preliminary testimony, it appeared that all parties understood the intent of the tenant's application was for the purpose of disputing the Notice. As a result, as I informed the parties, I have amended the tenant's application to include a request to cancel the Notice.

Issue(s) to be Decided

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

Background and Evidence

The testimony indicated that this one year, fixed term tenancy started on September 15, 2010, monthly rent is \$745.00 and the tenant paid a security deposit of \$372.50 on September 15, 2010.

The 10 Day Notice to End Tenancy for Unpaid Rent was issued by the landlord on August 8, 2011, via personal service, indicating an effective move out date of August 18, 2011. The amount listed as unpaid rent was \$281.95, due on August 1, 2011.

The tenant submitted that the rent listed was not unpaid rent, but rather it was a pest control bill the landlord had issued to her. The tenant stated that her rent of \$745.00 is paid directly to the landlord through her income assistance and that the landlord received this amount for August 2011.

The tenant submitted that she was informed by one of the agents for the landlord that the Notice was withdrawn and that the landlord would seek compensation for the pest control bill by withholding that amount from the tenant's security deposit.

In support of her application, the tenant submitted a copy of the payment of \$745.00 to the landlord.

The landlord confirmed that the amount listed was the amount of the pest control bill and that the landlord had received the amount of \$745.00 for August rent. The landlord also submitted that the tenant owed the amount listed as a pest control bill and has not paid it.

Analysis

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

As the tenant disputed the Notice, the landlord bore the burden of providing sufficient information to prove the tenant owed rent at the time the Notice was issued.

The landlord confirmed the tenant's assertion, that the landlord received the full cheque, withheld the amount listed on the Notice as unpaid rent from the tenant's rent cheque and applied that amount to satisfy the pest control bill.

As the landlord was informed during the hearing, the landlord was not entitled to apply any portion of a rent payment in satisfaction of a bill allegedly owed by the tenant.

I therefore find the tenant did not owe rent when the Notice was issued.

Conclusion

I therefore allow the tenant's Application for Dispute Resolution, and **I order that the Notice to End Tenancy dated August 8, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues until it may legally end.

I have not addressed whether the pest control bill is owed by the tenant or other issues concerning the tenant's security deposit as those issues are not before me or relevant to the application as the tenancy has not yet ended.

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 15, 2011.

Residential Tenancy Branch