



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, OPC, FF
MT, CNC, MNDC, PSF, LRE, AAT, FF

Introduction

This hearing dealt cross applications by the landlord and tenant. The application by the landlord is for an order of possession for unpaid rent, an order of possession for cause and recovery of the filing fee. The application by tenant is to allow more time to make an application, cancel a notice to end tenancy for cause, money owed or compensation for damage or loss, to order the landlord to provide services, suspend or set conditions on the landlord's right to enter, allow the tenant access to and from the rental unit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began August 1, 2011 with monthly rent of \$800.00 and the tenant paid a security deposit of \$400.00. On September 11, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, the tenant has filed to dispute this notice.

The tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- put the landlord's property at significant risk.
- damaged the landlord's property.
- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- jeopardized a lawful right or interest of another occupant or the landlord.
- caused extraordinary damage to the unit/site or property/park.
- has not done required repairs of damage to the unit/site.

- assigned or sublet the rental unit/site without landlord's written consent.
- Residential Tenancy Act only: security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

On September 12, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant has not filed to dispute this notice.

The landlord testified that because of problems with the tenant not paying rent and the use of drugs on the property that he had issued the tenant a 1 month notice to end tenancy for cause. The landlord stated that during the time after he had issued the notice to the tenant that he had turned off the electricity and water 4 times to the mobile home but had since learned that this was not allowed per the RTA and it has not happened again. The landlord stated that the services were off for a very short time on each occasion and he did not believe that the tenant had any food destroyed. The landlord stated that this was the first time he had been a landlord and that was why the 1 month notice was not dated and the landlord wrote notes on page 2 referring to a letter of September 1, 2011.

The landlord stated that they requested to have the \$800.00 rent paid twice a month and on September 12, 2011 he issued the tenant a 10 day notice for unpaid rent. The landlord confirmed that rent of \$400.00 had been paid on September 2, 2011 and that the next \$400.00 payment was due on September 16, 2011.

The tenant testified that she needed more time to dispute the 1 month notice as there was an issue with the date she was actually served. The tenant stated that she had not disputed the 10 day notice for unpaid rent as the amount on the notice was incorrect and the rent not past due.

The tenant stated that she did not agree with the reasons for the landlord serving the 1 month notice but that due to the many problems there have been with the tenancy, the tenant was actively looking for new accommodations and was hoping to vacate the rental unit by October 31, 2011.

The tenant acknowledged that she has not paid the \$400.00 balance of the September rent or the \$800.00 October rent that is due to the landlord.

The tenant stated that she had not submitted receipts for the food she lost when the electricity was turned off and offered no additional information as to what food was lost.

The tenant stated that the landlord had been entering her rental unit without giving proper notice but that this had stopped. The landlord stated that when the tenant moved in, his washer and dryer was still in the rental unit and he told the tenant he would leave the appliances there until hers were delivered on the condition that he could still use them. It was after the relationship between the two parties soured that the landlord

removed the washer and dryer which meant he no longer had to go into the tenant's rental unit.

The tenant stated that the driveway had been blocked but that it had actually been blocked by a vehicle belonging to a friend of the tenants. The tenant stated that her friend's vehicle had broken down and remained in the driveway for 3 days and that she had misunderstood the intent of 'allowing the tenant access' on the application. This portion of the tenant's application is hereby dismissed.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to an order of possession for cause or unpaid rent.

The 1 month notice to end tenancy for cause was not dated therefore this notice will be set aside. The landlord understands that he is a liberty to issue a new 1 month notice to end tenancy for cause.

The 10 day notice to end tenancy for unpaid rent was issued to the tenant prior to the rent due date therefore the landlord issued this notice prior to it being effective, this notice is therefore set aside. The landlord understands that he is a liberty to issue a new 10 day notice to end tenancy for unpaid rent.

The landlord's application is dismissed without leave to reapply.

In regards to the tenant's \$400.00 claim for lost food, I find, pursuant to section 62(2) of the Act, that in the absence of any verification of the cost claimed, that the claim for replacement costs is dismissed without leave to reapply.

The matter related to services and facilities not being provided by the landlord has been resolved therefore this portion of the tenant's application is dismissed without leave to reapply.

The matter related to restricting the landlord's right to enter has been resolved therefore this portion of the tenant's application is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

As neither application had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord's 1 Month Notice to End Tenancy for Cause is hereby set aside with the result that the tenancy continues uninterrupted.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated September 12, 2011 is hereby set aside with the result that the tenancy continues uninterrupted.

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: October 26, 2011.

Residential Tenancy Branch