



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, OLC, PSF, LRE, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting an order for the Landlord to comply with the Act, Regulation, and tenancy agreement, make emergency repairs for health or safety reasons, make repairs to the unit, site or property, provide services or facilities required by law, suspend or set conditions on the landlord’s right to enter the rental unit, and recovery of the filing fee for the cost of this application. The Tenant also requested an amendment to his Application requesting that a One Month Notice to End Tenancy be cancelled. Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter(s)

The parties agreed at the hearing to the Tenant’s request to amend his Application to deal with the One Month Notice to End Tenancy issued by the Landlord, which they confirmed is signed and dated October 29, 2011 by the Landlord.

The parties agreed at the hearing that the Landlord will provide the Tenant with the mailbox key for the rental unit and the laundry room fob immediately, as these had not been provided at the commencement of the tenancy.

The Landlord confirmed that the Tenant served the Application and Hearing Notice on him. The Application made by the Tenant did not itemize and detail his specific concerns regarding the repairs and issues with the rental unit, rather those details were contained in the evidence submitted at a later date by the Tenant. The Tenant stated that he did not serve a copy of his evidence and list of repairs and issues to the Landlord.

I find that the Tenant failed to disclose sufficient details on his Application as required by section 59(2)(b) of the Act, rather he included his specific details regarding his claim in the evidence which he separately submitted on November 15, 2011, prior to the hearing. I also find the Tenant’s evidence was not served on the Landlord accordance with section 88 of the Act. As a result the Tenant’s Application, aside from the amended request to cancel the One Month Notice to End Tenancy, is dismissed with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled or not?

Background and Evidence

The parties do not currently have a written tenancy agreement. The parties agree that the rent is \$650.00 per month and that rent is due on the first of each month. The parties agree that the Landlord received \$650.00 rent from the Tenant for November 01, 2011, but the Landlord did not issue a receipt. The parties agree that the Tenant moved in a few days early as the Landlord had provided him keys before the end of October, and the Tenant had paid the Landlord the November rent (\$650.00) in cash in advance of November 01, 2011. The Landlord stated the keys were provided to the Tenant on October 19, 2011. The Tenant states that the keys were provided on October 25, 2011 when he began to move items into the rental unit. The parties could not agree on what date in October the keys were received by the Tenant. The parties agree the tenancy was to commence on November 01, 2011, and that a security deposit was to be paid.

The Tenant stated that he tried to pay the Landlord the security deposit; however, the Landlord declined to receive it from the Tenant. The Tenant is also concerned by the undisputed fact that the Landlord did not issue him a receipt for the rent he paid in cash.

The Landlord states that the Tenant has not provided the security deposit and this is the reason the Landlord has issued the One Month Notice to End Tenancy for Cause. The Landlord states that he put the One Month Notice under the Tenant's door on October 27, 2011. The Landlord states that the document is signed and dated for October 29, 2011, although he served it two days earlier.

The Tenant states that he is not sure of the date the Notice was served, but that it was served while he was out of town and he did not receive it until the first week of November 2011 when he returned home and found it under his door. The Tenant has requested that the Notice be cancelled.

Analysis

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

I accept the Landlord's evidence that the Tenant was served with the One Month Notice to End Tenancy for Cause. However, I find that the One Month Notice to End Tenancy for Cause was not issued in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. Section 47 of the Act states that a Landlord may only end a tenancy for cause for non-payment of security deposit if it is not paid "within 30 days of the date it is required to be paid under the tenancy agreement".

In the absence of a written tenancy agreement or other clear agreement of the parties, the Landlord has failed to establish the date on which the security deposit was due. As a result it is premature for the Landlord to issue a One Month Notice to End Tenancy for Cause due to non-payment of a security deposit. I also find that the Landlord did not properly serve the Tenant the Notice to End Tenancy as the Landlord's testimony was that it was served two days earlier than the date the Landlord had written on the Notice as the issued date. Based on the foregoing, I grant the Tenant's request to cancel the One Month Notice to End Tenancy.

As the Landlord has clearly stated to the Tenant at the hearing on November 21, 2011 that the security deposit is due, I find that the Tenant has 30 days from the hearing date in which to pay it. The security deposit must not be more than half of a month's rent. The Tenant must pay the security deposit to the Landlord within the 30 days and no later than 1:00 P.M. December 20, 2011. The Tenant must also pay the monthly rent on the first of each month, as agreed at the commencement of this tenancy. The Landlord must issue receipts to the Tenant for any payments that are made in cash, pursuant to the requirements of the Act.

As the Tenant's other issues have been dismissed with leave to reapply, I decline to award the filing fee for this Application.

Conclusion

I have granted the Tenant's request to cancel this Notice to End Tenancy.

I dismiss the Tenant's other issues set out on his Application with liberty to reapply for Dispute Resolution.

I dismiss the Tenant's request for recovery of the filing fee.

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: November 22, 2011.

Residential Tenancy Branch