



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MT, CNR, MNR, FF, O

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord's Application requested an order of possession, a monetary order for unpaid rent and utilities, and recovery of the filing fee. The Tenant's Application requested more time for to make an application to cancel a Notice to End Tenancy, and to cancel a Ten Day Notice to End Tenancy for unpaid rent or utilities, and recovery of the filing fee.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The date the Notice to End Tenancy was received by the Tenant is in dispute. The Tenant and the Landlord agree that the Ten Day Notice for unpaid rent and utilities was served on the rental unit on November 02, 2011 by the Landlord's sons. The Tenant was not home at the time and rather than leaving the Notice taped to the door, the Landlord's sons left it with a resident of the rental unit, who confirmed he lived there. The Tenant states that she has received the Notice, however it was not properly served as it was given to a minor whom she stated was a 17 or 18 year old boy who lives with her. The Tenant has filed an Application to dispute the Notice requesting more time. Both the Landlord and Tenant applied for dispute resolution on the same date November 08, 2011.

Based on the above-mentioned issues with service of the Notice, I find that the Tenant appropriately filed her Application for Dispute Resolution as soon as possible after receiving the Notice. Section 71(2) of the Act allows me to determine whether or not a document has been sufficiently served for the purposes of this Act and allows me specify a date of service, if I deem it to have been served. Based on the fact that the Tenant has confirmed receipt of the Notice on or before November 08, 2011, the Notice has been served on the Tenant. In the absence of evidence from the Landlord to the

contrary, I deem the Notice served upon the Tenant as of November 08, 2011 which is the date of the Tenant's Application. As a result the Tenant's Application was received within five days of receiving the Notice and I have allowed the Tenant's Application to proceed and I have allowed the Landlord's Application to proceed as well.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

The parties agree that they have a tenancy agreement which commenced September 01, 2011. The parties agree that rent is \$1,400.00 per month due on the first of the month, plus \$285.00 per month for utilities. The parties also agree that the Tenant paid a security deposit of \$700.00 upon move in.

The Tenant confirmed that the Landlord is owed \$1,400.00 for rent for November 2011 and \$285.00 for utilities for October 2011.

The Tenant states that she provided cheques for November's rent and October's utilities at the beginning of the month to the Landlord, and that the two cheques were issued by DW from his personal and business account. The Tenant stated that DW is not a tenant at the rental unit and is not on the tenancy agreement, but that he assists her with rent and utility payments. The Tenant states that DW misspelled the Landlord's name on the cheques. The Tenant states that it is up to the Landlord to get in touch with DW and get the cheques changed to the correct spelling. The Tenant states that she has tried to give the Landlord the correct phone number for DW, but the Landlord has refused to take this.

The Landlord states the cheques issued by DW cannot be processed by her bank as the Landlord's name is misspelled on both of the cheques. The Landlord confirms the Tenant told the Landlord to deal with DW. The Landlord states that she has tried to contact DW by phone as suggested by the Tenant, however he cannot be reached at the number on the cheques. The Landlord states that as she has had difficulty in reaching DW the Tenant should replace the cheques herself, but the Tenant has not. The Landlord indicates that she has a mortgage to pay and the Tenant needs to get the rent paid to her and paid on time. The Landlord is seeking an order of possession on the rental unit and a monetary order for the unpaid rent and the utilities.

The Tenant states additionally that she should not have to pay the rent, until the Landlord resolves the sporadic heat issues in the rental unit and the electrical system which sometimes shorts out.

The Landlord states that when the Tenant initially complained to her about the heat, it was promptly responded to and the pellet stove was serviced and it works and gives off heat. The Landlord also states that they responded to the Tenant's request for the electrical to be fixed and that an electrician has been to the rental unit and has fixed everything. The Landlord states that all of these tasks were completed prior to November 01, 2011. The Tenant confirms that the work had been done, but they are still not satisfied with the resolution and want more work done on the heat and electrical.

The Tenant confirms that she has not put the specifics of her request in writing to the Landlord. The Tenant also confirmed that she does not want the Landlord coming to the rental unit to do any work unless an appointment is made with the Tenant.

The Landlord states that the Tenant has made no communication with her since November 06, 2011 and she is not sure the Tenant is even living there as there appear to be different people in the rental unit. The Tenant states that she still lives at the rental unit and she is seeking to have the Notice cancelled.

Analysis

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

As stated in the preliminary matters, I have found the Tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent. The Tenant's Application for Dispute Resolution of November 08, 2011, confirmed that the Tenant has received a copy of the 10 Day Notice and at the hearing the Tenant also confirmed she has received it. In accordance with section 71 of the Act, I find the Tenant was served on November 08, 2011.

The Notice states that the Tenant had five days to pay the full amount of the outstanding rent and utilities, or apply for Dispute Resolution, or the tenancy would end from the service date. While the Tenant did apply for Dispute Resolution, the Tenant did not pay the outstanding rent and utilities within five days from the date the Notice was deemed served. The deadline to do so was November 13, 2011. Although the Landlord indicated that the Tenant had until November 12, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to November 18, 2011, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent and utilities were not paid within five days.

The Tenant's reasons for not paying the rent and utilities are that it is up to the Landlord to contact DW to get the cheques reissued and that the heat and electrical are still not fixed to her satisfaction. I find that the Tenant may not withhold the rent from the Landlord for any of these reasons, and that it is the Tenant's responsibility to ensure that the Landlord receives full payment of the rent when it is due on the first of the month. It is not up to the Landlord to assist the Tenant in obtaining rent from DW.

I also find that the Tenant has failed to inform the Landlord in writing specifically about what she is still not satisfied with in relation to the repairs already done to the heating and electricity. There was no evidence provided that the Tenant has incurred any costs or damages in relation to the heat and electricity.

The evidence supports that Tenant failed to pay the rent, which is a breach of the tenancy agreement and section 26 (1) of the Act which states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

At the Hearing the Tenant confirmed the outstanding balance of \$1,400.00 rent for November and \$ 285.00 utilities for October 2011 had not been paid to the Landlord. I find that the Tenant failed to pay rent for November and utilities for October and did not vacate the rental unit within 10 days of service of the Notice.

Based on the aforementioned reasons I am dismissing the Tenant's Application. As a result the tenancy will end. I find that the Landlord is entitled to an order of possession effective not later than **two (2) days after service** of this order on the Tenant.

I also find that the Landlord has established a monetary claim of \$1,685.00 comprised of rent owing for November 2011 and utilities owing for October 2011.

I order that the Landlord retain the security deposit (\$700.00) in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$985.00.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to **\$1,035.00**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant's Application is dismissed.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$1,035.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

The orders accompany the Landlord's copy of the decision.

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 29, 2011.

Residential Tenancy Branch