



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent, for an Order for the landlord to make emergency repairs for health or safety reasons and for an Order for the landlord to make repairs to the unit, site or property.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find the tenant has applied for an Order for the landlord to make emergency repairs for health or safety reasons and for an Order for the landlord to make repairs to the unit, site or property. As these issues are unrelated to the main issue which is to cancel the Notice to End Tenancy for unpaid rent I dismiss these issues with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to cancel the 10 Day Notice to End Tenancy for unpaid rent?

Background and Evidence

Both parties agree that this month to month tenancy started on November 18, 2011. There is a verbal agreement in place that the tenant will rent this unit for the monthly rent of \$650.00 which is due on the first day of each month in advance.

The landlord testifies that the tenant failed to pay rent for December, 2011. The landlord's agent testifies that the tenant was given free rent for the last half of the month of November as he had agreed to clean the unit which had been left dirty by the previous tenants.

The landlord's agent testifies that the landlord is her uncle and the tenant had spoken to her uncle about doing some work in the building. The landlord's agent states she did not feel right about this as she had concerns about the tenant's contractors insurance or permits to carry out repair work so she asked the tenant to sign a form that no work was to start until the tenant provided these documents to the landlord. The landlord's agent states she felt the tenant was trying to extort money from her uncle and states she felt that he had no intention of paying rent for December, 2011. The landlord's agent states she served the tenant with a 10 Day Notice to End Tenancy on December 01, 2011 when the tenant failed to pay the rent.

The tenant disputes the landlord's agent claims. The tenant states the landlord approached him to do some repair work in the building as the landlord had heard the tenant was a contractor and the landlord was in trouble with the City about the condition of the building and the repairs that were required to bring the building back up to code. The tenant states he went to talk to the City about obtaining permits to do this work. The tenant states he went to pay his rent to the landlord's agent on December 01, 2011 and was told by the landlord's agent that she wanted him out of the building and she refused to take his rent payment. The

tenant states he had been told that the landlord's agent was going to try to evict him on December 01, 2011.

The tenant states the reason he believes the landlords agent is upset with him was because he found blood and a box of syringes in his unit which he had agreed to clean along with a great deal of repair work. He states he had agreed to clean the unit but had concerns about cleaning the blood due to the health risk involved. The tenant states he took the box of syringes to the police station and this upset the landlord's agent. The tenant states as the landlord's agent refused to take his rent payment he is not responsible for the late payment of rent and is still willing to pay his rent for December.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

Section 26 of the Act states: *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.*

Section 46 (1) of the Act states: *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

In this matter the landlord gave the tenant this 10 Day Notice prematurely as rent was due on the first day of the month and the tenant still had time to pay the rent on December 01, 2011 before the Notice was issued.

The landlord has stated the tenant failed to pay rent, the tenant argues he tried to pay his rent and the landlords agent refused to accept it as she wanted to evict the tenant. When a Notice of this nature is served upon a tenant the burden of proofing a claim falls to the

landlord. When the tenant contradicts the landlord's agent's testimony the landlord would be required to provide corroborating evidence to meet the burden of proof. The landlord has not provided any corroborating evidence and in light of the fact that the Notice was also issued prematurely I am unable to uphold the 10 Day Notice to End Tenancy.

The tenant's application is successful and the 10 Day Notice to End Tenancy is cancelled and the tenancy will continue.

The tenant is cautioned however to ensure rent is paid on the first day of each month. If the tenant fails to do so the landlord is at liberty to serve the tenant with another 10 Day Notice to End Tenancy on the day after the day the rent is due. If the landlord refuses to accept a rent payment from the tenant the tenant must show proof that the landlord was given the rent by other means.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for Cause dated December 01, 2011 is cancelled and the tenancy will continue.

The remainder of the tenant's application not heard today is dismissed with leave to reapply

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: December 23, 2011.

Residential Tenancy Branch