



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant and the landlord both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other. The tenant also provided evidence in advance of the hearing to the Residential Tenancy Branch, the latest of which was received on the day of the hearing, but did not provide a copy of it to the landlord. All evidence and testimony provided, with the exception of the late evidence provided by the tenant have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2011 and the tenant still resides in the rental unit. A copy of the tenancy agreement was not provided in advance of the hearing, however the landlord testified that paragraph 3a of the agreement states that rent in the amount of \$845.00 per month is payable in advance on the 1st day of each month. On January 18, 2011 the landlord collected a security deposit from the tenant in the amount of \$420.00.

The landlord further testified that the tenant failed to pay rent when it was due for the month of December, 2011. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 8, 2011, a copy of which was provided by the tenant in advance of the hearing. The notice states that the tenant failed to pay rent in the amount of \$845.00 that was due on December 1, 2011 and contains an expected

date of vacancy of December 18, 2011. The landlord testified that the notice was served on the tenant personally on December 8, 2011. The tenant has also not paid any rent for the month of January, 2012 and the landlord has issued another notice to end the tenancy.

The landlord requests an Order of Possession and a monetary order.

The tenant testified that the tenant receives a federal pension and a provincial pension. The federal pension didn't arrive in December, 2011 and the provincial ministry agreed to replace that cheque if the tenant provided a copy of the notice to end tenancy issued by the landlord. The tenant provided it, but the provincial government couldn't get ahold of the federal government to confirm entitlement, so no money was received.

The tenant also testified that people posing as police officers have entered her rental unit, and the tenant has been advised that the phone number and pass code for this hearing has been placed on the internet. The tenant also testified that this Decision has already been written fraudulently by another person.

The tenant was advised to not pay the rent because it amounts to extortion; the municipality has given the tenant the right to live in the rental unit, however no evidence of that was provided for this hearing.

Analysis

The *Residential Tenancy Act* is clear; a tenant must pay rent when it is due even if the landlord has failed to comply with the *Act*, regulations or tenancy agreement. If the tenant fails to pay rent when it is due, the landlord may issue a notice to end tenancy. Once served, the tenant has 5 days to pay the rent in full or apply for dispute resolution. If the tenant pays the rent in full within that 5 day period, the notice is of no effect. If the tenant does not pay the rent or apply for dispute resolution to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be 10 days after the tenant receives the notice.

In this case, the notice to end tenancy was received by the tenant on December 8, 2011. The tenant did not pay any of the outstanding rent, but disputed the notice on December 13, 2011, which is within the 5 days required under the *Act*. However, I have no evidence before me to satisfy me that the landlord is not entitled to the payment of rent. Therefore, I must dismiss the tenant's application.

The *Residential Tenancy Act* also states that:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

In this case, having found that the tenant's application must be dismissed, I have no further discretion; the landlord has requested an Order of Possession, and I must issue same. The landlord also requested a monetary order for the unpaid rent, but I decline to issue such an order because I have no application before me and a similar provision does not exist in the *Act* for a monetary order. The landlord is at liberty to make a further application with the Residential Tenancy Branch.

Conclusion

For the reasons set out above, I hereby dismiss the tenant's application without leave to reapply.

I further grant an Order of Possession in favour of the landlord pursuant to Section 55 of the *Residential Tenancy Act* upon 2 days notice to the tenant. This order is final and binding on the parties and may be enforced.

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: January 06, 2012.

Residential Tenancy Branch