



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, RR, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a 10 Day Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, for an Order for the landlord to provide services or facilities required by law; for an Order to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and 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 to cancel a Notice to End Tenancy for unpaid rent. The remainder of her application with the exception of the recovery of the filing fee is unrelated to this main issue and these issues will not be dealt with at the hearing and as such these sections of the tenants claim are dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on June 01, 2011. The landlord has provided a copy of a tenancy agreement in which it states rent is \$1,050.00 per month due on the first day of each month. This agreement also states the rent includes water, electricity, and heat and cable vision. The tenancy agreement is signed by the landlord but unsigned by the tenant. The landlord claims this was an oversight on his behalf. The tenant testifies that she did not receive a copy of this agreement until the landlord filed his application. The tenant testifies and has provided a note from the landlord which states rent is \$850.00 plus \$200.00 for utilities each month and this note has been signed by the landlord and was given to the tenant when she paid her security deposit.

The landlord testifies that the tenant failed to pay rent for January, 2012. The landlord testifies he served the tenant with a 10 Day Notice to End Tenancy on January 02, 2012. The landlord has provided a proof of service document which states the tenant was served in person but also states the tenant would not answer her door. The landlord states the 10 Day Notice was left on the tenant's doorstep. This Notice states the tenant owes the sum of \$1,050.00 which was due on January 01, 2012 and the Notice has an effective date of January 12, 2012. This notice is unsigned and dated by the landlord.

The tenant testifies that the landlord did not pay the gas bill and the tenant was without gas for five days around thanksgiving. The tenant testifies that she had a conversation with the landlord about this and offered to have the utilities put into her own name. The tenant states the landlord said if she wants to do this it would be great.

The tenant states she had concerns about this happening again over Christmas so she contacted Fortis gas and was advised by them that a disconnection notice had been sent to the landlord and the only way to avoid disconnection was to have the gas bill put into the tenant's name. The tenant testifies that she did as she was advised and had the gas account put into her name as the landlord had already indicated in October that the tenant could do this. The tenant testifies she asked the landlord for a copy of the utility bills so she could work out what she owed in rent for January. The tenant agrees she withheld January's rent.

The tenant testifies that she attempted to pay some rent to the landlord but he refused to accept it. The tenant testifies that she was advised at the Residential Tenancy Office to not pay any rent unless the landlord gave her a receipt because she was paying cash.

The landlord testifies that he did not refuse to accept rent from the tenant. The landlord states he wanted the rent and would have accepted any amount at that time. The tenant has provided a copy of the text messages between the tenant and landlord which state the tenant wants a receipt for the rent and the landlord will provide one the following day. The landlord states he wanted no contact with the tenant and had asked her to leave her rent in the mail box at his office as the tenant normally pays rent by cheque.

The landlord agrees the gas was cut off in October and states as he was away at the time and because it was a long weekend he could not do anything until after thanksgiving. The landlord states he then sorted out the problems with Fortis gas and the gas was put back on.

Analysis

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.*

A landlord is entitled to serve a tenant with a 10 Day Notice if the tenant fails to pay rent on the day it is due. In Order for a 10 Day Notice to be valid it must be signed and dated by the landlord and served in a manner pursuant to s. 88 of the Act. In this matter I find the landlord did not sign and date the Notice and failed to serve the tenant correctly with the Notice. Consequently, it is my decision that the 10 Day Notice is an invalid document and the tenants application to cancel the Notice is upheld.

The landlord is at liberty to serve the tenant with another 10 Day Notice if rent remains outstanding.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord pursuant to s. 72(1) of the Act.

The tenant is at liberty to file a new application to deal with the remainder of her issues not dealt with at the hearing today.

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 19, 2012.

Residential Tenancy Branch