



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, RP, OPT, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an Order of Possession of the rental unit pursuant to section 54; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord testified that the 10 Day Notice was handed to an adult at the tenant's rental unit on January 5, 2012. According to the tenant's application for dispute resolution, she did not receive this 10 Day Notice until January 10, 2012, upon her return from a detox treatment program. She submitted her application for dispute resolution the following day. The landlord confirmed that she handed a copy of her dispute resolution hearing package to the landlord's representatives on January 14, 2012. I am satisfied that the 10 Day Notice and the tenant's dispute resolution hearing package were served in accordance with the *Act*.

At the hearing, the landlord made an oral request for an end to this tenancy and an Order of Possession if the tenant's application to cancel the 10 Day Notice were dismissed.

Issues(s) to be Decided

Should the tenant's application for an extension of time to file her application for dispute resolution be allowed? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to obtain repairs to her rental unit, an Order of Possession for the rental unit, or a reduction in rent?

Background and Evidence

Other than the tenant's application for dispute resolution, the only written evidence either party chose to submit was the tenant's provision of a copy of the landlord's 10 Day Notice. Both representatives at this hearing did not have a full understanding of the details of this tenancy, a problem which led to uncertainty regarding important aspects of the tenant's application and the landlord's request for an end to this tenancy.

The landlord's representative (the landlord) estimated that the tenant has been living in this rental property for four or five years. The tenant's advocate (the advocate) said that he had a copy of a March 1, 2009 residential tenancy agreement between the landlord and the tenant, but there was no mention of which rental unit this agreement involved. The landlord said that the tenant has lived in more than one rental unit in this rental property since she first commenced living there. At one point, the parties agreed that the rent for the tenant's rental unit was set at \$750.00 on a periodic tenancy. The parties agreed that the tenant was paying one-half the monthly rent, which was provided through a shelter allowance supplied by the Ministry of Social Development (the Ministry). The landlord said that the landlord continues to keep a security deposit for one-half month's rent, \$375.00, although he was uncertain when this was paid.

Later in the hearing, the landlord said that the rent in Unit 6 where the tenant was staying was \$716.10. He testified that this amount was supposed to be paid equally by the tenant and a now departed co-tenant. At another point in the hearing, the landlord stated that the monthly rent was \$700.00, of which the tenant was paying one-half.

The landlord's 10 Day Notice identified \$716.10 in unpaid rent owing as of January 1, 2012. The landlord testified that the tenant has continued to pay her half of the rent for this rental unit for November 2011, December 2011 and January 2012. However, these monthly payments, variously described by the landlord as \$350.00, \$358.05 and \$375.00, did not cover the entire monthly rent for this rental unit. He said that the Ministry is continuing to provide a shelter allowance, the results of which have been applied to rent for this rental unit. He confirmed that the landlord has continued to accept these payments for rent, although no receipts have been issued to his knowledge. He provided few details regarding a rent ledger or rental payment history for this tenancy.

Analysis

Based on the circumstances surrounding the landlord's provision of the 10 Day Notice to end this tenancy, I allow the tenant's request for a 1-day extension of time to apply for dispute resolution to dispute the 10 Day Notice. I am satisfied that the tenant acted on this matter as soon as it came to her attention when she returned to her rental unit.

Although the tenant has not been paying all of the rent required for this rental unit, the landlord testified that the landlord has been continuing to accept her rent payments, even after the 10 Day Notice was issued. The landlord said that receipts have not been provided and, in fact, the landlord gave three different versions of the monthly rent for this rental unit and the amounts received from the tenant. While I understand that the landlord is concerned that the tenant incorrectly believes that she is only responsible for her half of the full monthly rent, I find that the landlord's continuing acceptance of rental payments for this tenancy continues this tenancy. The landlord provided no oral or written evidence that would demonstrate that payments directed to this tenancy have been accepted for use and occupancy only.

For these reasons, I allow the tenant's application to cancel the 10 Day Notice with the effect that this tenancy continues. As I have not dismissed the tenant's application in this regard, there is no need to consider the landlord's oral request to end this tenancy and obtain an Order of Possession.

With respect to the other items identified in the tenant's application, the tenant's advocate had little information other than what was provided in the tenant's application for dispute resolution. I dismiss all of the other items identified in the tenant's application as neither she nor her advocate provided sufficient evidence to obtain any of the outcomes she was seeking.

Conclusion

I allow the tenant's application for an extension of time to file her application for dispute resolution. I allow the tenant's application to cancel the landlord's 10 Day Notice with the effect that this tenancy continues. I dismiss the landlord's oral request to end this tenancy and to obtain an Order of Possession.

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: February 03, 2012

Residential Tenancy Branch