



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, RR, MNDC, OLC, FF

For the landlord – OPR, MNR, MND, MNDC, FF, SS

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant has applied to cancel a Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement, for an Order to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; to serve documents or evidence in a different way than required under the *Act*; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew his application for a substitute service Order as the landlord states the tenant has been served with the hearing documents and evidence.

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 for unrelated issues such as an Order for the landlord to comply with the *Act*, regulation or tenancy agreement, for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement, for an Order to reduce rent for repairs, services or facilities agreed upon but not provided. I further find the landlord has also applied for unrelated issues such as a Monetary Order for damage to the unit, site or property and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement. Consequently, I am not prepared to deal with these unrelated issues at the hearing today and dismiss these issues for both parties with leave to reapply.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession based on the 10 Day Notice to End Tenancy?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

Both parties agree that this month to month tenancy started on June 01, 2011. Rent for this unit is \$700.00 per month and is due on the first day of each month.

The landlord testifies that the tenant failed to pay rent for March and April, 2012. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on April 20, 2012 in person. This notice states the tenant owes rent of \$1,400.00 which was due on March 01, 2012. The notice informs the tenant that the tenant has five days to pay the outstanding rent or dispute the Notice or the tenancy will end. The landlord has not indicated an effective date of the notice.

The landlord testifies that since the Notice was served upon the tenant the tenant has also failed to pay rent for May, 2012. The landlord seeks to amend the application to include unpaid rent for May. The total amount of unpaid rent is now \$2,100.00.

The landlord seeks an Order of Possession effective as soon as possible and seeks a Monetary Order to recover the unpaid rent and filing fee.

The tenant disputes the landlord's claims. The tenant testifies that the landlord was returning to India and asked the tenant to pay rent for January and February before the landlord went overseas and rent for March and April to be paid on the landlords return on April 30, 2012. The tenant testifies that they put an addendum to the tenancy agreement in place which stated this agreement. The tenant has provided a copy of this addendum in evidence. The tenant testifies that the landlord returned from his trip early and demanded the rent for March and April on April 20, 2012.

The tenant testifies that she did withhold the rent because the tenant was without heat while the landlord was away and lost quiet enjoyment of her rental unit.

The tenant states she does want to move from the rental unit but seeks to cancel the Notice as she has nowhere to move to at this time. The tenant also seeks to recover her filing fee.

The landlord agrees that the addendum to the tenancy agreement was in place but states as he returned early he wanted rent for March and April, 2012.

Analysis

In order for a Notice to be valid it must be served to the tenant on the day before the day that rent was due pursuant s.46 of the *Act*. I find that for the months of March and April, 2012 the landlord and tenant had an addendum to the tenancy agreement which stated that the tenant would pay rent for January and February in advance and the rent for March and April, 2012 must be paid on April 30, 2012. When there is an addendum to a tenancy agreement this becomes part of the tenancy agreement and as such the information contained within the addendum forms part of the contract between the parties. Therefore, I find the landlord served the tenant prematurely with the 10 Day Notice to End Tenancy when the landlord served the Notice on April 20, 2012 as at that time no rent was outstanding according to the agreement. Consequently, the landlord's application for an Order of Possession based on this 10 Day Notice is dismissed and the tenant's application to cancel the 10 Day Notice to End Tenancy is upheld. The 10 Day Notice dated April 20, 2012 is set aside and the tenancy will continue.

With regard to the landlords claim for unpaid rent; 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.

I find the tenant has continued to withhold rent without an Order to do so or without an agreement in place between the landlord and tenant. Consequently, I find the landlord has established that the tenant owes rent for March, April and May, 2012 and the landlord is therefore entitled to recover this rent of **\$2,100.00**. I have allowed the landlord to amend his application for May, 2012 as the tenant continues to reside in the

rental unit and would be aware that rent is due on May 01, 2012. The landlord has been issued with a Monetary Order for this sum pursuant to s. 67 of the *Act*.

As both parties have applied to recover their \$50.00 filing fee I find each party must bear the cost of filing their own applications and the parties' requests to recover the filing fees are both dismissed.

Conclusion

The tenant's application to cancel the 10 Day Notice is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated, April 20, 2012 is cancelled and the tenancy will continue.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,100.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

The landlord's application for an Order of Possession is dismissed. The landlord is at liberty to reserve the tenant with a new 10 Day Notice if rent for June, 2012 is not paid on the day it is due.

Both parties are at liberty to file a new application for the remainder of their respective claims.

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: May 22, 2012.

Residential Tenancy Branch