



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, ERP, RP

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued in January 2013 pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33.

The Respondent (the landlord) appeared at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 1:44 p.m. to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord's representative HC (the landlord) testified that she handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant on January 4, 2013. She said that this 10 Day Notice for unpaid rent of \$710.00 for January 2013 identified an effective date of January 14, 2013. She also testified that on February 7, 2013, she handed the tenant a second 10 Day Notice for unpaid rent of \$710.00 for February 2013. She said that the effective date on this second 10 Day Notice was February 17, 2013. Neither party entered into written evidence a copy of either of the above two 10 Day Notices.

The other representative of the landlord at this hearing, NS, testified that the tenant handed her a copy of the tenant's dispute resolution hearing package on January 28, 2013. Before the hearing, the Landlord NS requested an Order of Possession if the tenant's application for cancellation of the 10 Day Notice were dismissed. She repeated this oral request at the hearing.

Issues(s) to be Decided

Should the tenant's application be dismissed? Has the landlord reinstated this tenancy following the issuance of the first 10 Day Notice? Is the landlord entitled to an Order of Possession on the basis of the first 10 Day Notice?

Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2012. Monthly rent is set at \$710.00, payable in advance on the first of each month.

The landlord testified that she accepted a \$710.00 rent payment for January 2013 from the Ministry of Social Development (the Ministry) on the tenant's behalf on January 21, 2013. She said that she accepted this payment for rent and issued the tenant a receipt for this rent payment to that effect. She testified that her receipt confirmed that she did not accept the January 21, 2013 payment for use and occupancy only.

Both of the landlord's representatives testified that the tenant was again late in paying her February 2013 rent. Landlord's representative NS testified that a \$19.04 late fee remains owing for this tenancy for January 2013, plus unpaid rent of \$710.00 for February 2013, plus another late fee for February 2013. She confirmed that the late fee was not identified as rent owing in the first 10 Day Notice.

Analysis

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submission from the applicant other than her application for dispute resolution, I order the tenant's application dismissed without liberty to reapply.

The landlord's request for an Order of Possession based on the 10 Day Notice of January 4, 2013 was made pursuant to section 55(1) of the *Act*. This section enables a landlord to obtain an Order of Possession in the event that a tenant's application to cancel a 10 Day Notice is dismissed.

Based on my decision to dismiss the tenants' application for dispute resolution, this tenancy ended on the effective date of the 10 Day Notice, January 14, 2013. However, subsequent to that date, the landlord accepted rent for this tenancy for the month of January 2013 on January 21, 2013. By accepting a payment for this tenancy for rent, I find that the landlord reinstated this tenancy.

Although the landlord did not provide the Residential Tenancy Branch with copies of either 10 Day Notice, the landlord may be correct in asserting that the tenant is once more in arrears and has not applied to cancel the second 10 Day Notice. As I noted at the hearing, the only application before me is the one filed by the tenant on January 18, 2013 to seek a cancellation of the first 10 Day Notice issued on January 4, 2013. Thus, I can only consider the landlord's request for an Order of Possession based on the initial 10 Day Notice for unpaid rent for January 2013. Since I find that the landlord reinstated the tenancy on January 21, 2013, I cannot grant the landlord an Order of Possession on the basis of the 10 Day Notice issued on January 4, 2013. I dismiss the landlord's request for an Order of Possession on the basis of the 10 Day Notice of January 4, 2013, without leave to reapply.

Conclusion

I dismiss the tenant's application for dispute resolution without leave to reapply for the items noted in that application.

I also dismiss the landlord's request for the issuance of an Order of Possession based on the 10 Day Notice of January 4, 2013. This tenancy continued as of January 21, 2013.

The landlord is at liberty to apply for an Order of Possession on the basis of any notice to end tenancy issued to the tenant subsequent to January 21, 2013.

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 14, 2013

Residential Tenancy Branch

