



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I noted that the tenant had submitted her evidence package to the Residential Tenancy Branch after the time limit provided by the Rules of Procedure. The tenant acknowledged that she mailed her evidence package to the landlord only recently, although she did not know the exact date. The landlord stated that he just received the tenant's evidence package yesterday and had not had an opportunity to prepare a response. The evidence package appeared to be in support of the tenant's monetary claims against the landlord.

The tenant requested an adjournment so that her evidence may be considered. The landlord indicated he wanted to regain possession of the unit immediately.

I confirmed the tenant continues to occupy the rental unit; thus, the issue of most importance is whether the 10 Day Notice to End Tenancy for Unpaid Rent should be upheld or cancelled.

In these circumstances, I continued to hear from the parties with respect to the 10 Day Notice and I dismissed the tenant's monetary claims against the landlord with leave to reapply.

Issue(s) to be Decided

Is there a basis to cancel the 10 Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

Pursuant to a written tenancy agreement, the tenant is required to pay rent of \$1,300.00 on the 1st day of every month. The tenant failed to pay rent when due for April 2013 and on April 4, 2013 the landlord attended the property to deliver a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The tenant's daughter permitted the landlord to enter the rental unit and the landlord placed the 10 Day Notice on the tenant's table. The tenant filed to dispute the 10 Day Notice on April 12, 2013 indicating that only her teenagers were in the house when the landlord delivered the 10 Day Notice.

The tenant acknowledged that the rent for April 2013 was not paid when due and explained that it was because her source of funds had been erroneously delivered to an address. By the time the tenant received the funds the time to pay the rent had elapsed. Upon receiving the funds the tenant did not offer the outstanding rent to the landlord, or pay any monies for May 2013, as she needs that money to move to a new home.

The tenant stated that she has prepared to move and is expecting movers shall be provided to her in the next few days.

The landlord orally requested he be provided an Order of Possession effective immediately.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent under the Act. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

After receiving a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. In this case, the tenant filed to dispute the Notice and indicated

on her application that the 10 Day Notice was left on her table on April 4, 2013 while only teenagers were home.

Documents that are to be served upon another party must be served in a manner that complies with the Act. Serving a Notice to End Tenancy is to be served in accordance with section 88 of the Act. Leaving the 10 Day Notice on the tenant's table is not a method of service permitted by section 88 of the Act.

Although the landlord did not serve the tenant with the 10 Day Notice in a manner that complies with section 88 of the Act, there is no dispute that the tenant did receive the 10 Day Notice. Therefore, pursuant to the authority afforded to me under section 71 of the Act, I order that the tenant received the 10 Day Notice three days later, on April 7, 2013.

Having ordered the tenant was sufficiently served with the Notice on April 7, 2013, I accept that the tenant failed to dispute the Notice within five days of receiving it. Therefore, I proceed to continue whether there is a basis under the Act to cancel the Notice.

A tenant's inability to pay the rent when due, or within five days of receiving the 10 Day Notice, is not a basis for cancelling the 10 Day Notice under the Act.

In light of the above, I uphold the 10 Day Notice and find that this tenancy has ended for unpaid rent. Accordingly, the tenant's request to cancel the Notice is dismissed.

As provided under section 55 of the Act, I grant the landlord's oral request for an Order of Possession. Provided to the landlord is an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice has been dismissed and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The tenant's monetary claims against the landlord have been dismissed with leave to reapply.

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 09, 2013

Residential Tenancy Branch