



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, CNL, CNE, MT, LRE, FF, O

Introduction

This matter dealt with an application by the Tenants to cancel Notices to End Tenancy, for more time to make the application, to set restriction of the Landlord's right of entry to the rental unit, to recover the filing fee and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 15, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notices to End Tenancy?
2. Are the Tenants entitled to more time to make the application?
3. Should restriction be placed on the Landlord's right of entry to the rental unit?
4. What other considerations are there?

Background and Evidence

This tenancy started on June 1, 2012 as a month to month tenancy. Rent is \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 on May 31, 2012 and a pet deposit of \$250.00 on May 31, 2012. Both parties indicated the rent was reduced in trade for the Tenants caretaking the property.

The Landlord said he served the Tenants with two Notices to End the Tenancy. First a 1 Month Notice to End Tenancy for cause dated August 14, 2013. The causes were a breach of the tenancy agreement, putting the property at significant risk and not making required repairs. The second notice to end the tenancy was a 10 Day Notice to End the Tenancy for unpaid rent dated September 4, 2013. The Landlord said served the Notice on September 4, 2013 by personal delivery to the Tenants. The Landlord submitted a proof of service document that is signed by a witness confirming service of

the Notice to End Tenancy dated September 4, 2013. The Effective Vacancy date on the Notice is September 15, 2013. The Landlord said he has not received any rent payment for September, 2013.

The Landlord continued to say that the Tenants have unpaid rent of \$500.00 for the month of September, 2013. The Landlord continued to say he has just made an application for an order of possession and a monetary claim. As the Landlord's application was just filed it is not part of this Hearing.

The Tenant said they have not paid the September, 2013 rent on the advice of a number of her advisers. The Tenant said she was concerned that the Landlord will not return her security and pet deposits and she cannot afford to lose \$500.00. As a result the Tenant said she chose not to pay the September, 2013 rent of \$500.00. The Arbitrator informed the Tenant that by not paying the rent when it was due or complying with the 10 Day Notice to End Tenancy means the Notice to End Tenancy is valid and in effect. The Tenant said she understood that but thought it was unfair.

The Tenant continued to say the allegations the Landlord has made to support the 1 Month Notice to End Tenancy for Cause are untrue. The Tenant wanted to investigate all the Landlord's allegations, but as the 10 Day Notice to End the Tenancy is valid and in effect, to be successful in cancelling the 1 Month Notice to End Tenancy would not gain anything. The Arbitrator decided not to pursue or validate the 1 Month Notice to End Tenancy for Cause.

The Tenant was unhappy that the 10 Day Notice to End Tenancy was found to be valid and in effect and that pursuing the allegations of the Landlord in support of the 1 Month Notice to End Tenancy would not change the outcome of the Hearing. The Tenant had a copy of the Act and the Tenant read section 26 "Rules about payment and non payment of rent". The Tenant understood that if the rent is not paid the Tenancy will end unless the Tenant has an order to retain a portion or all of the rent. Although the Tenant believed she had cause to retain the September, 2013 rent she did not have an order to do so.

The Tenant was also concerned about her security and pet deposits and when she would have to move out. The Arbitrator indicated these questions would most likely be answered at the Hearing that would deal with the Landlord's application.

The Landlord said in closing that he would wait for his application to be heard to request an Order of Possession and a Monetary Order for unpaid rent.

Analysis

Section 26(1) says 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.

The Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenants have not established grounds to be granted an order to cancel the 10 Day Notice to End Tenancy for unpaid rent. The Landlord's 10 Day Notice to End Tenancy dated September 4, 2013 stands in full effect. The Effective vacancy date on the 10 Day Notice to End Tenancy dated September 4, 2013 is September 15, 2013. I find the Tenant is overholding the tenancy.

As the 10 Day Notice to End Tenancy is valid and in full effect and the effective vacancy date on the Notice is September 15, 2013 the other items in the Tenants' application are not material. I dismiss the Tenants' application without leave to reapply.

As the Tenants were not successful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

The Tenants' application to cancel the Notices to End Tenancy is dismissed without 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: September 17, 2013

Residential Tenancy Branch

