



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, LRE

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy, to cancel a notice to end tenancy, and an order restricting the landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The tenant received a 10 Day Notice to End Tenancy on September 3, 2013 and applied to cancel the Notice on September 6, 2013. Section 46 allows the tenant 5 days from the date of receipt of the Notice to apply to cancel the Notice, as the tenant applied within 3 days of receiving the Notice I find there is no need for additional time to apply. As such, I amend the tenant's Application to exclude the matter of additional time.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to file an Application to dispute a notice to end tenancy; to an cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order suspending or setting conditions on the landlord's right to enter the rental unit, pursuant to Sections 29, 46, 66, and 70 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in March 2010 as a month to month tenancy for the current monthly rent of \$650.00 due on the 1st of each month with a security deposit of \$325.00 paid.

The tenant submits that she did not pay rent for the month of September 2013 because the landlord had verbally agreed to allow her to not pay rent for the month of September 2013 if she agreed to move out of the rental unit at the end of September 2013.

In her written submission she states that at the end of July 2013 she was told by the landlord that he was selling the house and he was giving her 2 month's notice to end the tenancy and the last month would be free.

The landlord testified that he has put the house up for sale and that he did speak with the tenant when he put it up for sale about the potential of what might happen in the event that he was able to sell the property. The landlord submits that he offered that if the property was required to be vacant to ensure a sale went through that he would compensate the tenant.

The landlord stated he had not issued any other notice to end tenancy to the tenant other than the 10 Day Notice to End Tenancy for Unpaid Rent issued on September 3, 2013 with an effective vacancy date of September 13, 2013 citing \$650.00 in unpaid rent.

The tenant submits she did not pay rent for September because of the above verbal agreement; that she put a deposit on a new rental unit but lost the new location and has not paid October rent for this unit because the landlord informed her income assistance worker who has stopped rental payments to the tenant pending the outcome of this hearing.

The landlord acknowledges that he has received some monies from the tenant's son. He states the son has paid \$200.00 for September rent and \$400.00 for October rent.

The tenant also seeks to suspend or set limits on the landlord's right to enter the rental unit. The tenant submits that the landlord has hired people to complete work upstairs and that they have gained access to her unit through a sliding door that has no lock on it.

Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

A tenant might be granted the right to withhold rent from a landlord if the tenant had received a 2 Month Notice to End Tenancy for Landlord's Use of Property and the landlord had not provided the 1 month's rent compensation prior to the last month of the tenancy or if she had a mutual written agreement between the parties confirming such an agreement.

There is no evidence before me that the landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property or that there was a written agreement with the landlord that he would give her September 2013 rent if she moved out at the end of September 2013. Further the landlord has testified that he never entered into any such agreement with the tenant. As such, I find the tenant has failed to provide sufficient evidence that she had any such agreement with the landlord and was required to pay rent for the month of September 2013.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As I have found the tenant was required to pay rent, in full, for the month of September 2013 and she failed to do so even after the landlord issued the 10 Day Notice on September 3, 2013 and then again failed to provide any rent payment for the month of October 2013 I find the landlord is authorized under Section 46 to end the tenancy. I acknowledge that the landlord has received some of the rent owed by the tenant from her son in the amount of \$600.00 towards a total owing of \$1,300.00 leaving a balance owing of \$700.00.

As I have found the landlord has the right to end the tenancy and that it will end I find no reason to make any findings or orders related to the portion of the tenant's Application seeking to suspend or set conditions on the landlord's access to the rental unit.

Conclusion

For the reasons above, I dismiss the tenant's Application in its entirety and order the tenant must vacate the rental unit in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent issued on September 3, 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: October 21, 2013