



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNSD, OPR, MNDC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant's Application is seeking an order to cancel two 10 day Notices to End Tenancy for unpaid rent, for money owed under the Act or tenancy agreement, to allow the Tenant to reduce rent and for "other" relief. The Tenant testified the other relief sought was pest control.

The Landlords filed a claim for an order of possession based on unpaid rent, and requested monetary orders for unpaid rent, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

This tenancy began on July 1, 2013, with the parties entering into a written tenancy agreement. The monthly rent was \$840.00, payable on the first day of the month. The Tenant paid a security deposit of \$420.00 on June 30, 2013.

Based on the testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on August 30, 2013. The Landlords had received a cheque from the Tenant and it was initially not accepted by their bank, as the Landlords had not endorsed the cheque. The Landlords endorsed the cheque and deposited it again. The cheque was then returned and the Landlords were informed by their financial institution that the cheque could not be traced back to a bank.

The Landlords informed the Tenant that the rent for August had not been paid. They did not hear back from her, and they left her a voice mail and warned her that if payment was not received they would issue a Notice to End Tenancy for unpaid rent. It appears the parties may have also communicated on a well known social media website. Not having heard back from the Tenant, the Landlords issued the Notice to End Tenancy on August 30, 2013, by posting to the door. They testified they had little or no communication with the Tenant following this.

The Landlords testified that the Tenant did not pay the rent for September either, and on September 2, 2013, the Landlords issued a second 10 day Notice to End Tenancy for unpaid September rent. The Landlords further testified that the Tenant did not pay rent for October of 2013.

The Landlords claim for August rent and September rent in the amount of \$1,680.00, plus the filing fee for the Application of \$50.00.

Both Notices informed the Tenant that the Notices would be cancelled if the rent was paid within five days. The Notices also explain the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notices as described above.

The Tenant testified she had not paid the rent for August or September of 2013. The Tenant testified that she had thought the August rent cheque had been cleared and the Landlords were paid for August rent. The Tenant did not think it was fair that the Landlords could demand she pay the rent on August 30, 2013, when she had thought the funds had been paid out. The Tenant testified she did not check her bank balance prior to using the money in the account.

The Tenant testified she did not pay the rent because the rental unit is infested with ants. The Tenant testified she withheld the rent because of the pest problems.

The Tenant alleged she had spent money on pest control; however, she did not provide a copy of the receipt in evidence.

I note the procedures for providing evidence for the hearing were provided to both parties in writing at the time they filed their Applications.

The Landlords replied they had minor problems with ant infestations each year and that the strata council for the building where the rental unit is located deals with the pest control for the ant problem.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Based on the testimony of both parties, I find that the Tenant has not paid all the rent due to the Landlord for August or September of 2013, and therefore, the 10 day Notices to End Tenancy are valid and should not be cancelled.

Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from the Residential Tenancy Branch allowing her to do so, or, if the Tenant had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no order from the Branch, nor did she have any evidence she had paid for emergency repairs. In any event paying for pest control does not qualify as an emergency repair under section 33 of the Act.

This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlords, and I find the Tenant has breached the tenancy agreement and the Act by failing to pay rent.

Therefore, I dismiss the Application of the Tenant. I find she has insufficient evidence to prove she is entitled to monetary compensation or the other relief sought in her Application, and these claims are dismissed without leave to reapply.

The effective date of the last 10 day Notice to End Tenancy was September 17, 2013, and the Tenant admitted she has paid no rent for October. Having found the Tenant has failed to pay all rent when due, I find that the Landlords are entitled to an order of

possession effective **two days after service on the Tenant**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlords have established a total monetary claim of **\$1,730.00**, comprised of \$1,680.00 in rent due for August and September of 2013, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlords may retain the deposit of **\$420.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,310.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 17, 2013

Residential Tenancy Branch

