



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, ERP, RP, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent; and, for orders for the landlord to make repairs, including emergency repairs. 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.

Issue(s) to be Decided

1. Was a valid and enforceable 1 Month Notice to End Tenancy for Cause served upon the tenants?
2. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
3. Is it necessary to issue repair orders to the landlord?

Background and Evidence

The month-to-month tenancy commenced in August 2012 and the tenants were required to pay rent of \$1,000.00 on the 1st day of every month. The tenants did not pay a security deposit or a pet damage deposit. Shortly after the tenancy began the tenants started paying their rent by way of two \$500.00 payments per month.

On August 22, 2013 the tenants received a document from the landlord indicating the tenants were required to vacate the rental unit by September 15, 2013. The document was not a Notice to End Tenancy in the approved form.

It was undisputed that the last rent payment made by the tenants was \$500.00 on September 6, 2013 for which the landlord gave the tenants a receipt indicating the rent

was for the period of September 1 – 15, 2013. The tenants have not paid rent since and continue to occupy the rental unit.

On October 7, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent, in the approved form, and posed it on the door of the rental unit that same day. The 10 Day Notice has a stated effective date of October 17, 2013.

The 10 Day Notice indicates rent of \$500.00 was due on August 15, 2013 and \$1,000.00 was outstanding for September 1 – October 1, 2013. The landlord acknowledged that he had indicated the incorrect dates in completing the 10 Day Notice and that it should have read \$500.00 was due on September 15, 2013 and \$1,000.00 was due for October 2013.

The tenant acknowledged that she was aware of the months for which rent was paid or not paid, as the landlord had given receipt to the tenants, and the periods for which rent was owed was not in dispute even though the 10 Day Notice reflects incorrect dates. Rather, the tenant submitted the reasons for not paying the rent were that:

1. The tenants lost the landlord's phone number;
2. The tenants did not have the landlord's mailing address; and,
3. The landlord had not made repairs to the property.

I pointed out to the tenant that the 10 Day Notice submitted as evidence by the tenant included the landlord's phone number and mailing address. The tenant responded that her husband did not want to send the rent in the mail and the tenant acknowledged that they did not consider obtaining a bank draft or money order as an alternative to cash.

The landlord requested an Order of Possession be provided to him as soon as possible.

Analysis

Where a landlord wishes to end a tenancy, the landlord must serve the tenant with a Notice to End Tenancy in the approved form. I determined that the only Notice to End Tenancy the landlord served to the tenants that was in the approved form was the 10 Day Notice dated October 7, 2013. Therefore, the document received by the tenants on August 22, 2013 is not valid or enforceable and I not end the tenancy based on that document.

The 10 Day Notice contained errors with respect to the periods for which rent was outstanding; however, after hearing from both parties, I am satisfied that that both

parties knew that rent had not been paid for the latter half of September 2013 or October 2013 and knew, or ought to have known, the dates that should have appeared on the 10 Day Notice issued on October 7, 2013. I also find that the erroneous dates contained in the Notice did not prejudice the tenants as it did not form part of the tenants' reasons for withholding rent. Therefore, pursuant to section 68 of the Act, I amend the 10 Day Notice to correct the dates for which rent was outstanding to read: \$500.00 as of September 15, 2013 and \$1,000.00 as of October 1, 2013.

Pursuant to sections 46, 53 and 90 of the Act, the effective vacancy date on the 10 Day Notice automatically changed to read October 20, 2013 since the 10 Day Notice was posted on the door.

When a tenant receives 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. If a tenant files to dispute the Notice the tenant must be prepared to establish that they had a legal basis for withholding the rent or that they did in fact pay the rent. In this case, the tenants did not claim to have paid the rent. Therefore, I proceed to consider whether the tenants established a legal basis for not paying the rent.

Under section 26 of the Act, a tenant is required to pay rent even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The legal reasons for withholding rent are very limited and are specifically provided for in the Act.

Emergency repairs may be a basis for withholding rent provided all of the criteria provided under section 33 of the Act are met. In any event a tenant must produce a receipt to establish they expended their own money in order to have an emergency repair made at the residential property. The tenants did not produce any such evidence of an emergency repair in this case. Therefore, I find the tenants did not have a basis for withholding rent due to emergency repairs.

Further, as the tenant was informed during the hearing, merely needing the landlord to make repairs to a rental unit is not a basis for withhold rent under the Act. The Act provides a remedy where repairs are not made by a landlord. Only with the prior authorization of an Arbitrator may the tenant withhold rent due to repairs not made. The tenants did not have such authorization in this case.

While the tenants may have lost the landlord's phone number and may not have had the landlords' mailing address prior to receiving the 10 Day Notice; I find the tenants did not

make any attempt to give the landlord the outstanding rent after receiving the 10 Day Notice. Interestingly, the tenants were able to serve the landlord with their Application for Dispute Resolution via registered mail using the address provided on the 10 Day Notice; but, neglected to send any payment of the rental arrears to the landlord. Therefore, I find it was within the tenants' control to pay the outstanding rent but they chose not to.

Since the tenants did not pay the outstanding rent and did not have a legal basis for withholding rent, I dismiss the tenant's request to cancel the 10 Day Notice. As such, I find the 10 Day Notice is valid and enforceable and the tenancy is at an end.

Pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession as requested by the landlord during the hearing. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

As the tenancy is at an end I find it unnecessary to further consider the tenants' request for orders for repairs and emergency repairs.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenants.

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: November 20, 2013

Residential Tenancy Branch

