



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY RIDGE APTS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes *OPR, MNR, CNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent and a monetary order for rent owed.

The tenant applied for an order to cancel both the Ten Day Notice to End Tenancy for Unpaid Rent dated February 2, 2014 and the One-Month Notice to End Tenancy for Cause dated January 29, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession and a monetary order for unpaid rent based on the the Ten Day Notice to End Tenancy for Unpaid Rent ?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order to cancel the Notice for Unpaid Rent?
- Is the tenant entitled to an Order cancelling the One-Month Notice to End Tenancy for Cause ?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on January, 2014 and the current rent is \$660.00 per month payable on the 1st day of each month and a security deposit of \$140.00 was paid.

The landlord testified that they issued the tenant with a One-Month Notice to End Tenancy for Cause on January 29, 2014. A copy of the One Month Notice is in evidence.

The landlord testified that the tenant failed to pay the rent due on February 1, 2014 and the landlord then issued a Ten Day Notice to End Tenancy for Unpaid Rent on February 2, 2014. The landlord testified that the tenant did not pay the \$660.00 rent owed for February.

The landlord is seeking an Order of Possession and a monetary order for rent owed.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence.

The landlord testified that the tenant also paid the rent owed for January, 2014 late and did not pay the entire security deposit owed. The landlord pointed out that the copies of the receipts submitted into evidence by the tenant confirm that the testimony is truthful and also verifies that receipts were always issued when cash has been exchanged. The landlord testified that the tenant did not pay the failed to pay \$660.00 rent owed for March 2014 either.

The tenant's testimony disputed that the rent was not paid for February 2014. According to the tenant, the landlord accepted a cash payment for rent after February 2, 2014, but refused to issue a receipt to the tenant. The tenant acknowledged that the they withheld the rent for March 2014, but stated that this was out of fear that the landlord would still refuse to issue a receipt.

The tenant stated that they are a good tenant who always pays the rent. The tenant alleges that the landlord will not admit to being paid the rent because the landlord wants to terminate the tenancy for other reasons. The tenant pointed out that the landlord chose to issue the Ten Day Notice to End Tenancy for Unpaid Rent because the tenant was disputing the One-Month Notice to End Tenancy for Cause served previously.

The tenant is requesting that the Ten-Day Notice and the One-Month Notice to End be cancelled.

Analysis:

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. In this instance, I find as a fact that the tenant had not paid the

\$660.00 rent for February as of February 2, 2014. A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears and I find that the landlord did issue a Ten Day Notice to End Tenancy for Unpaid Rent .

The Act provides that payment of the rental arrears within five days of receiving the Notice would have served to automatically cancel the Notice and the tenant has testified that the arrears were paid in time to cancel the Notice.

I find that after the tenant received the landlord's 10-Day Notice on February 2, 2014, the tenant had until February 7, 2014 to pay the arrears which would automatically cancel the Notice. However, on February 4, 2014, the tenant made an application to dispute the 10-Day Notice two days after receiving it.

I find that, if the tenant had paid the rent for February 2014 before making the application, there would be no need to file an Application to dispute the Notice as it would have been automatically cancelled by the payment. I note that the tenant makes no mention of paying the February rent and being denied a receipt in the "details of Dispute" section of the Application.

I also find that the tenant willfully withheld rent for the month of March. I find that the 10-Day Notice to End Tenancy for Unpaid Rent contains information cautioning a tenant that withholding the rent is not permitted under the Act. I do not accept the tenant's explanation that the rent was withheld due to fear of not getting a receipt. I find that the tenant was aware her tenancy was at risk and the tenant could have taken steps to ensure that the payment of the funds was on record, by having the landlord sign an acknowledgement before releasing the rent payment or by paying by cheque or money order.

Given the above, I find that, on a balance of probabilities, the tenant did not pay the rent owed for February 2014 or for March 2014, and is currently in arrears for \$1,320.00 in rent.

Therefore the Ten-Day Notice is valid and I find that the tenant's request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent must be dismissed.

Accordingly, I find that the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

I find that the landlord is entitled to total monetary compensation of \$1,370.00 comprised of accrued rent of \$1,320.00 owed for February and March 2014 and the \$50.00 cost of the application.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

As I have found that the landlord is entitled to be reimbursed \$1,370.00, I order that the landlord retain the tenant's \$140.00 security deposit in partial satisfaction of the claim, and hereby issue a monetary order to the landlord for the remainder of \$1,230.00.

This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court and enforced as an order of that court.

The tenant's application is dismissed in its entirety, without leave to reapply.

Conclusion

The landlord is successful in the application and is granted a monetary order and an Order of Possession. The tenant's application seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent cancelled is dismissed without leave.

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: March 24, 2014

Residential Tenancy Branch

