



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF

Introduction

This hearing was scheduled for a teleconference call to deal with a tenant's application to cancel a 10 day Notice to End Tenancy for Unpaid Rent; and, for Orders for the landlord to comply with the Act, regulations or tenancy agreement and provide services or facilities. 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.

The landlord testified that he served the tenant with his evidence package by posting it on the door of the rental unit the week prior to the hearing; however, the tenant denied receiving the landlord's evidence package. Given the disputed testimony concerning service of the evidence, I excluded the evidence from further consideration and informed the landlord that he may provide his position orally during the hearing.

After both parties had an opportunity to be heard and I began to give the parties my findings orally the tenant began crying loudly into the telephone. I offered the tenant an opportunity to take a break to compose herself. The tenant stated that she did not expect or want to participate in a hearing where the landlord is given an opportunity to be heard. I informed the tenant that is the purpose of a hearing – to hear from both parties – and the landlord has the right to provide a response to the tenant's Application for Dispute Resolution. The tenant indicated she preferred not to participate any further and asked for the name of my supervisor. I informed the tenant that I am a delegated authority of the Director of the Residential Tenancy Branch and cautioned the tenant that I would continue to hear from the landlord even if she exited from the teleconference call. The tenant indicated that was a good idea and she proceeded to exit the teleconference call.

After the tenant left the teleconference call the landlord orally requested an Order of Possession effective April 30, 2014 to permit the tenant a reasonable opportunity to secure alternative accommodation and peaceably vacate the rental unit.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties entered into a verbal tenancy agreement on July 15, 2013 requiring the tenant to pay rent of \$1,000.00 on the 15th day of every month. On February 16, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating the tenant failed to pay rent of \$1,000.00 that was due on February 15, 2014. The tenant received the Notice on February 17, 2014 and the tenant filed to dispute the Notice within the time limit for doing so.

Both parties provided consistent submissions that the tenant paid \$1,000.00 to the landlord in early February 2014; however, the tenant submitted this payment was for the period of February 1 – 28, 2014. The landlord submitted that this payment was for the period of January 15, 2014 – February 15, 2014.

The tenant was of the position the parties changed the due date for rent to the 1st day of every month. The tenant submitted that in order to change the due date to the 1st, the tenant gave the landlord additional rent of \$500.00 in November 2013. The tenant claimed the additional rent was paid by way of cash placed in three different envelopes which were given to the landlord or the landlord's spouse. The tenant could not recall the sum of money included in each envelope or the dates the envelopes were given to the landlord or his spouse.

The landlord testified that there was no agreement to change the due date for rent payments to the 1st day of every month and the landlord denied that the tenant paid any additional rent to bring the due date to the 1st. Rather, the landlord took the position that the tenant started paying her rent later and later to the point where her payments were made close to the 1st of the month. The landlord questioned how the tenant could come up with additional rent when she was unable to pay the monthly rent when due.

The parties provided consistent testimony that on February 26, 2014 the landlord offered to forgive the outstanding rent if the tenant would move out of the rental unit since it is clear to the landlord the tenant cannot afford the rent. The tenant was not agreeable to this proposal and on February 28, 2014 the tenant presented the landlord

with a money order for \$900.00 and on March 6, 2014 the tenant presented the landlord with a money order for \$100.00. Again, the parties were in dispute as to what period these payments apply.

The tenant testified that prior to giving the landlord the above described money orders all of the tenant's payments had been in the form of cash for which she was not given receipts until the receipt issued in early February 2014.

The landlord responded by stating the tenants first two payments were made by way of a cheque and then the tenant changed to cash payments. The landlord acknowledged that he did not give rent receipts for cash payments until the tenant asked for them in December 2013.

The tenant then changed her testimony to acknowledge that her first two payments to the landlord were by way of a cheque written on a joint account she had with her former spouse. The tenant also stated that immediately prior to renting this unit she was essentially homeless but staying with relatives temporarily.

Analysis

The Act requires a landlord to prepare a written tenancy agreement; however, the Act defines a tenancy agreement to mean an agreement between a landlord that is written, oral, express or implied. As such, landlords and tenants have both rights and obligations under the Act even if their tenancy agreement is not in writing. In the case before me, the parties entered into an oral tenancy agreement.

Under the Act, a tenant is required to pay rent when due to the landlord, as provided under the tenancy agreement. It was undisputed that when the tenancy formed, the parties agreed the rent was due on the 15th day of every month.

The tenant submitted the due date for rent changed to the 1st day of every month; however, the landlord refuted this position. Thus, it was before me to determine whether the due date for the rent payment changed. In order to change a term of a tenancy agreement, the Act requires that the change be made with the agreement of both parties.

Where there is a dispute involving a change to a term of the tenancy agreement, the party alleging a term was changed bears the burden to prove their position. The burden of proof is based on the balance of probabilities. I find the disputed verbal testimony, in the absence of any other corroborating evidence and lack of sufficient detail concerning

the alleged additional rent payments made by the tenant, insufficient to find the tenant met her burden of proof. Further, I found the landlord highly credible and his version of events more likely.

Since the 10 Day Notice was posted on the door and received by the tenant on February 17, 2014 the effective date of the Notice automatically changes to read February 27, 2014 under section 53 of the Act. I am satisfied the landlord did not agree to reinstate the tenancy upon payment of rent after the effective date of the 10 Day Notice as both parties stated the landlord clearly communicated to the tenant that he wanted the tenant to move out. Therefore, I find that any payment of monies received after the effective date of the Notice represent compensation for use and occupation of the rental unit until the tenant vacates the rental unit.

In light of all of the above, I dismiss the tenant's request to cancel the 10 Day Notice.

Section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find the criteria of section 55 have been met in this case and I grant the landlord's request for an Order of Possession effective April 30, 2014.

As the tenancy is at an end, I find it unnecessary to further consider the tenant's other requests for orders for compliance and services or facilities. As such, those portions of her application are dismissed.

Conclusion

The tenant's application has been dismissed in its entirety. The landlord has been provided an Order of Possession effective April 30, 2014 to serve and enforce as necessary.

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: April 11, 2014

Residential Tenancy Branch

