



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession and a monetary order. The hearing was conducted by conference call. The landlord attended with her son. The tenant called in and participated in the hearing. She had an intended witness present with her during the hearing.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy be cancelled?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to an order for possession pursuant to the Notice to End Tenancy dated April 7, 2014?

Background and Evidence

The rental unit is a house in Abbotsford. The tenancy began on December 1, 2014. The monthly rent is \$1,450.00. The tenant paid a security deposit of \$750.00 on November 27, 2013. The Landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on March 31, 2014. The Notice was given with respect to rent to be due on April 1, 2014 for the month of April. Neither party provided a copy of the Notice to End Tenancy. The landlord said that the Notice to End Tenancy was given to the tenant at her request when she told the landlord she would be unable to pay April rent and it was given to the tenant so that she could use it to secure money from a charitable organization to pay the rent. On April 4, 2014 the tenant filed an application for dispute resolution to cancel the Notice to End Tenancy because it was given prematurely.

On April 7, 2014 the landlord issued a second 10 day Notice to End Tenancy for non-payment of April rent. It was posted to the door of the rental unit and required the tenant to pay rent in the amount of \$1,450.00 within 5 days in order to cancel the Notice to End Tenancy.

The tenant did not pay rent within 5 days of receiving the Notice to End Tenancy. She made a rent payment of \$1,450.00 on April 30 that was intended to be payment of rent for May. The tenant continues to occupy the rental unit and she has not paid rent for April or for June. The landlord has requested a monetary order for unpaid rent and late fees and an order for possession.

At the hearing the tenant testified that on April 24th she met with the landlord and her son to discuss a proposed meeting that she wanted the landlord to attend to confirm to the organization proposing to pay rent on her behalf that the landlord would agree to continue the tenancy if the rent was paid. The tenant said that the landlord agreed to meet in person, but then failed to do so. She said that the landlord's claim that she sent an e-mail instead, was never confirmed and the supposed e-mail message has never been provided. The tenant blamed the landlord's failure to attend the meeting and said that this was the cause of the charity refusing to advance her the money to pay the April rent payment. The tenant said she has funds to pay June rent, but will not be able to pay April rent because of the landlord's failure to attend the meeting or to communicate her willingness to continue the tenancy.

The landlord said that she was unable to attend a proposed meeting because she was ill. She said that she sent an e-mail but was not able to provide a copy. The landlord has requested an order for possession to be effective as soon as possible. The landlord has also requested a monetary order for the unpaid rent, plus a further \$660 said to be owed for late fees, calculated at \$10.00 for each day that rent remains unpaid.

Analysis

The obligation to pay rent when it is due rests with the tenant and it is not the landlord's obligation to seek out the tenant or to take extraordinary steps to convince a third party to pay rent on the tenant's behalf. The tenant applied to dispute an incorrect Notice to End Tenancy. The landlord served a new Notice to End Tenancy. The new Notice to End Tenancy was not rendered invalid because the tenant applied to dispute the earlier Notice to End Tenancy. Even if I treat the tenant's application as properly brought to dispute the April 7th Notice to End Tenancy, the tenant has not provided evidence that would justify cancelling the Notice to End Tenancy or reinstating the tenancy. I

therefore dismiss the tenant's application without leave to reapply and I grant the landlord an order for possession pursuant to the Notice to End Tenancy dated April 7, 2014.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is 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.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$2,175.00 for the outstanding rent for April and for half of June. The landlord is not entitled to recover any amount for late fees because the *Residential Tenancy Act* and the Regulation allows for a late fee in the maximum amount of \$25.00 with respect to any late payment if it is provided for in the tenancy agreement. The landlord's claim for \$10.00 per day is based on an illegal contractual term and therefore unenforceable. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,225.00. I order that the landlord retain the deposit and interest of \$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,475.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 05, 2014

Residential Tenancy Branch

