



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, DIR, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, to cancel a 1 Month Notice to End Tenancy for Cause, (the notices) to dispute an additional rent increase, to have the landlord comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Should the notices to end the tenancy be cancelled?

Should an additional rent increase be cancelled?

Should the landlord be ordered to comply with the Act or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

Based on the testimony of parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent which the tenant acknowledged it was received on May 3, 2014. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days.

The tenant stated that she did not pay the full amount of rent because the landlord had given her a rent increase that was not in compliance with the Act.

The landlord stated the parties agreed in writing to an addition rent increase of \$100.00, on April 11, 2014 and the tenancy agreement was amended. Filed in evidence is a copy of the revised tenancy agreement, which support the landlord's position.

Analysis

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

In this case, the tenant acknowledged that rent was not paid in full as required by the notice to end tenancy for unpaid rent because they alleged the landlord has failed to comply with the Act, by issuing an illegal rent increase.

Under section 43 of the Act,

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) **agreed to by the tenant in writing.**

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

On April 11, 2014, the landlord and tenant signed a revised tenancy agreement which increase the tenant's rent from \$1,765.00 to \$1,865.00, effective May 1, 2014. I find the revise tenancy agreement is an agreement in writing and the tenant is not entitled to dispute the increase as the revised tenancy agreement is binding on both parties. I find the tenant has failed to prove the landlord impose a rent increase that was not in compliance with section 43 of the Act.

Therefore, I find the tenant breached the revised tenancy agreement and section 26 of the Act, when they failed to pay all rent owed for May 2014.

The tenant acknowledged that they did not pay the outstanding rent within five days of receiving the notice to end tenancy. I find the notice to end the tenancy was a valid notice and therefore I dismiss the tenant's application to cancel the notice to end

tenancy for unpaid rent. The landlord requested an order of possession, which I must grant pursuant to section 55 of the Act.

As the effective vacancy date in the notice to end tenancy has passed and the tenant was issued a receipt for "use and occupancy only" for the month of June 2014, I find it appropriate in this case to extend the effective vacancy date to June 30, 2014 at 1:00 pm, pursuant to section 66 of the Act. I find the landlord is entitled to an order of possession effective at 1:00 pm on June 30, 2014. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy will legally end in accordance with the Act on June 30, 2014, I find there is no requirement for me to hear the tenant's application to cancel the notice to end tenancy for cause.

As the tenant has not been successful with their application, I find the tenant is not entitled to recover the cost of the filing fee from the landlord.

Although I have found the landlord is entitled to an order of possession and is entitled to enforce the order on June 30, 2014. The landlord agreed to delay the enforcement of the order if the tenant agreed to the following conditions:

1. The tenant pays the outstanding rent arrears of \$200.00 by cheque immediately;
2. The tenant pays the full amount of July 2014, rent and their portion of utilities on July 1, 2014;
3. The tenant allows the landlord to show the rental unit to prospective renters between the hours of 8 am to 8 pm daily, subject to the landlord giving the tenant six hours notice of the showing by text message and by calling the tenant's landline those numbers were confirmed at the hearing;
4. The tenant and any occupant or guest will refrain from communicating with the landlord or prospective renters during the showings;
5. The tenant will ensure her german sheppard will either be removed from the property or fully secured during the showings; and
6. The tenant must vacate the rental premises on July 31, 2014 at 1:00pm.

The tenant agreed to the above conditions and understands and accepts the order of possession will be enforced if any of the above terms are not complied with.

Conclusion

The tenant's application to dispute an additional rent increase is dismissed.

The tenant failed to pay rent in accordance with the signed revised tenancy agreement. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy, which I granted an extension under section 66 of the Act.

The tenant's application to cancel a 1 Month Notice to End Tenancy for Cause was not required to be heard as the tenancy has ended based on unpaid rent.

As the tenant's application was dismissed, the landlord is granted an order of possession.

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 20, 2014

Residential Tenancy Branch

