



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities, for an order cancelling a notice to end tenancy for landlord's use of property, and to recover the filing fee from the landlord for the cost of the application.

The parties both attended and gave affirmed testimony, and the landlord was also assisted by legal counsel. The parties were given the opportunity to cross examine each other on the testimony provided.

The tenant provided 4 pages of evidence to the Residential Tenancy Branch, but did not provide those pages to the landlord. However, the parties were also given the opportunity to provide additional evidentiary material after the hearing had concluded and the tenant provided an additional 8 pages by facsimile on July 17, 2014, and the landlord provided 40 pages by facsimile on July 18, 2014. All evidence was received by me on July 22, 2014. All evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent or utilities be cancelled?
Should the notice to end tenancy for landlord's use of property be cancelled?

Background and Evidence

The landlord testified that this fixed term tenancy began on January 1, 2012, expired on January 1, 2013 and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$950.00 per month is payable on the 1st day of each month for the previous month, and not in advance. On December 8, 2011

the landlord collected a security deposit from the tenant in the amount of \$475.00 which is still held in trust by the landlord.

The landlord also testified that hydro is not included in the rent and the parties had a verbal agreement wherein the tenant agreed to pay to the landlord an additional \$50.00 per month. On April 4, 2014 the tenant offered to increase that amount to \$100.00 per month but the landlord did not agree because he stated it wasn't enough and wanted the tenant to put the hydro in her name; the tenant did not agree to do so.

The landlord further testified that he told the tenant he could not afford 2 mortgages, and stated that he thought that if the tenant moved out, he would have better luck selling the rental unit. The tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 15, 2014 by personally handing it to the tenant. A copy of the notice has been provided and it is dated May 15, 2014 and contains an expected date of vacancy of July 31, 2014. The reason for issuing the notice is: Landlord has all necessary approvals and permits in place for demolishing or renovating the rental unit in such a manner that it requires it to be vacant. The landlord testified that no permits are required; he wants to put in new flooring, complete some painting and install an efficient hot water tank.

The landlord testified that once he served the tenant, no further rent was paid.

The landlord then issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 5, 2014 and served the tenant with a copy the same day by registered mail. A copy of that notice has been provided and it is dated June 5, 2014 and contains an expected date of vacancy of June 17, 2014. The notice states that the tenant failed to pay rent in the amount of \$950.00 that was due on June 1, 2014. The tenant has not paid rent for the months of May and June.

The tenant testified that there were no problems between the parties until the tenant offered to pay \$100.00 for hydro. Rent is always paid directly to the landlord's bank account except the first month, which was paid when the security deposit was paid. The tenant also stated that she has always paid rent at the beginning of the month for that month, not for the previous month, although some payments were late. Never was rent paid at the end of a month for that month; she has always paid in advance.

The landlord told the tenant that he wanted to discuss a new lease with the tenant, and the landlord served the tenant with the first notice to end tenancy. Once receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property, she withheld rent for June

as compensation. The tenant then received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and contacted the Residential Tenancy Branch. The landlord had told the tenant that he wanted to discuss the lease and said he was going to withhold the security deposit.

The tenant further testified that the rental unit is an apartment within an apartment complex. The rental unit is virtually new and does not require the renovations that the landlord has contemplated.

The landlord has provided bank records showing deposits made by the tenant, but some do not indicate the year of the deposit.

The tenant provided copies of receipts in the evidentiary material, but some documents are difficult, if not impossible to read.

Analysis

Where a notice to end tenancy for landlord's use of property is disputed by a tenant, the onus is on the landlord to prove the validity of the notice, which can include the reasons for issuing it. In this case, the landlord served the 2 month notice which states that the landlord intends to renovate or demolish in such a way that the rental unit needs to be vacant. He testified that he wants to install new flooring, complete some painting and install a new hot water tank. The tenant testified that none of that work needs to be done and the rental unit is in virtually new condition. The landlord also testified that he told the tenant that he believed he would have better luck selling the rental unit if it were vacant. In the circumstances, I am not satisfied that the rental unit needs to be vacant to do any of the work the landlord intends to do. The landlord simply needs to give the tenant notice of when the work will be done in accordance with the *Residential Tenancy Act*. I find that the landlord has not established that the rental unit needs to be vacant for the reason set out in the notice to end tenancy, and I hereby cancel it.

With respect to the notice to end tenancy for unpaid rent, I have reviewed the tenancy agreement and the receipts provided by the parties, and I find that the parties entered into a written tenancy agreement, albeit undated, for a tenancy to commence on January 1, 2012 and that the tenant paid rent for the month of January in the amount of \$950.00 on January 1, 2012. I am also satisfied that the tenant paid a security deposit in the amount of \$475.00 in December, 2011.

The landlord testified that the rent is payable on the 1st day of each month for the previous month, and not in advance, however the tenant disagrees. I have reviewed the tenancy agreement which clearly states that rent is payable on the first day of the rental period which commences on January 1, 2012. Also, the tenant paid for the first month in advance. Although there are not receipts provided for each month of the tenancy, I find that the landlord has failed to establish what rent is due and owing, and I hereby cancel the notice to end tenancy.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost. I hereby order the tenant to reduce rent for August, 2014 by that amount.

Conclusion

For the reasons set out above, 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 15, 2014 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 5, 2014 is hereby cancelled and the tenancy continues.

I hereby order the tenant to reduce rent by \$50.00 for the month of August, 2014 as recovery of the filing fee.

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: July 24, 2014

Residential Tenancy Branch

