



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order ending the tenancy earlier than a notice to end tenancy would take effect, and for an order of possession.

The parties both appeared and gave affirmed testimony. The tenant was accompanied by another person, who observed only and did not testify, with the consent of the landlord. Neither party provided any evidentiary material to the Residential Tenancy Branch prior to the commencement of the hearing.

The parties were given the opportunity to cross examine each other on their testimony, all of which is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an order of possession ending the tenancy earlier than a notice to end tenancy would take effect?

Background and Evidence

The parties agree that this month-to-month tenancy began in January, 2013 and the tenant still resides in the rental unit. The landlord testified that rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month. The parties entered into a written tenancy agreement, but the landlord cannot find it.

The landlord further testified that the tenant failed to pay rent in full when it was due in May, 2014, having paid the landlord \$1,000.00. The tenant further failed to pay any rent for June, 2014 and paid \$450.00 for July and \$1,000.00 for August. The landlord

served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 10, 2014 by personally handing it to the tenant. A copy of the notice has not been provided, but the landlord testified that it is dated May 1, 2014 and contains an expected date of vacancy of May 10, 2014. The tenant paid some rent after the issuance of the notice, the latest being \$1,000.00 for August, 2014. The landlord did not issue any receipts because the tenant didn't ask for any.

The landlord further testified that the yard of the rental unit is a mess, and the neighbours and the City have complained to the landlord. Some of it has been cleaned up, but only half, or perhaps 20% has been completed.

The tenant testified that rent is always paid in cash and the landlord has never issued a receipt. The parties signed a tenancy agreement and the landlord was to return a copy to the tenant, but didn't. The parties entered into another written agreement wherein the tenant didn't have to pay rental arrears for May and didn't have to pay rent for June, 2014, and the tenant signed that agreement. The landlord told the tenant he would take it to a lawyer and have it written up properly and then provide the tenant with a copy, but he never did.

The tenant further testified that City personnel had given the tenant an order stating that the yard of the rental unit had to be cleaned up within 14 days, and the tenant is taking steps to ensure that happens. There are about 10 days left, and failing to do so will result in the City imposing a fine on the tenant. The tenant does not want to pay a fine so will do what is necessary to avoid that.

The tenant also testified that at the commencement of the tenancy, there was no shop in the yard, but the landlord has since built one and rents it from the tenant for \$1,000.00 per month.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay the rent when it is due, the landlord may serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant then has 5 days from the date of service to dispute the notice or pay the rent in full. If the tenant pays the rent in full within that 5 day period, the notice is of no effect and is essentially cancelled. However, if the tenant does not pay the rent and does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date.

In the event that the landlord collects rent after the effective date of the notice, the landlord is entitled to receive that money, but must make it clear to the tenant that the money is being accepted for use and occupancy of the rental unit, and does not serve to reinstate the tenancy. In this case, the landlord did not provide the tenant with a receipt, did not specifically inform the tenant that money was being received for use and occupancy only, and continued to collect rent for future months. Therefore, I find that the landlord has reinstated the tenancy.

In any event, the landlord has applied to end the tenancy earlier than a notice to end tenancy would take effect because of the mess in the yard and the unpaid rent. However, I find that the landlord has failed to establish that the tenant has engaged in illegal activity, or has caused extraordinary damage to the rental unit, or that the tenancy should end earlier than a notice to end tenancy would take effect. The landlord's application is hereby dismissed.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed and the tenancy continues.

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: August 08, 2014

Residential Tenancy Branch

