



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Makola Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPB, MND, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant's advocate.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally in accordance with Section 89.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for a breach of an agreement; to a monetary order for damage to the rental unit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 44, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the tenancy is a month to month tenancy for a monthly rent of \$479.00 due on the 1st of each month. The landlord submits that they took over responsibility for the rental unit as of March 1, 2014 and that prior to that the tenant had already been living in the unit; no copy of a tenancy agreement was provided by the previous landlord.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 8, 2014 with an effective vacancy date of July 23, 2014 due to \$912.60 in unpaid rent.

The landlord clarified that the tenant had held a party in December 2013 and that during the course of the party a window and patio door were broken. The tenant had acknowledged responsibility for the damage and had signed a repayment agreement on December 17, 2013.

The landlord submitted a copy of this repayment agreement as well as a letter dated June 9, 2014 advising the tenant of the payment schedule of \$150.00 per month until the total \$912.60 had been paid. The payments were to be made with the tenant's rent payments on the 1st of each month beginning July 1, 2014.

The landlord submits that the tenant failed to pay the additional \$150.00 on July 1, 2014 and a 10 Day Notice to End Tenancy for Unpaid Rent was issued listing the total amount of the debt and not any rent amount. The landlord acknowledged that such a notice should not have been issued.

The landlord also testified that the tenant has begun making the payments and has already paid on August 1, 2014 and September 1, 2014 reducing the amount of the outstanding debt to be \$612.60.

The landlord filed their Application for Dispute Resolution but is no longer seeking to end the tenancy but only want a monetary order to ensure the tenant continues to repay the outstanding balance of the debt.

Analysis

Section 44(1) stipulates that a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or

f) The director orders that the tenancy is ended.

While the landlord has indicated they are not looking to end the tenancy I note that even if I were to consider the landlord's Application for an order of possession based on a breach of an agreement, the agreement was a repayment agreement and not a fixed term tenancy agreement that required the tenant to vacate or a mutual agreement to end the tenancy. As such, I note that I would dismiss the landlord's application for the order of possession.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

As the tenant has acknowledged, by way of signing the repayment agreement, that she is responsible for the payment of the costs to repair the damages I find the landlord is entitled to a monetary order for the balance owing.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As per the landlord's testimony I find that no rent owed on the date that the 10 Day Notice to End Tenancy for Unpaid Rent was issued. As such, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 8, 2014.

As to the landlord's request to recover the filing fee for their Application, I note that the tenant has begun to pay the landlord the agreed upon amounts according to the payment schedule.

While I accept the tenant did not make the first payment she has shown that she is willing to make the payments and has done so on two occasions. I also note that the landlord did not submit their Application until after these two payments were made. As such, I find that the landlord may not have required a monetary order to ensure payment was received.

Therefore, I find that the landlord made a choice to ensure they had the "back up" of a monetary order for the repayment agreement which was not necessary unless the tenant failed to make future payments.

I find that even though the tenant had applied to dispute the 10 Day Notice based on disagreement with the landlord's repayment agreement and accounting the landlord could have simply presented those arguments during the hearing called based on the tenant's Application and they, themselves, did not need to file a separate Application to make their arguments.

Based on the above, I dismiss the landlord's claim to recover the filing fee.

Conclusion

I grant the tenant's Application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 8, 2014 and find the tenancy remains in full force and effect.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$612.60** comprised of the outstanding amount of the repayment agreement for costs related to the replacement of a window and patio door.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 16, 2014

Residential Tenancy Branch

