



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

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 (the “notice”) issued on September 2, 2014.

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.

Preliminary matter

At the outset of the hearing, the landlord stated that the applicant EO is not a tenant under the Act. The landlord stated EO rented a room from the tenant AL. The applicant EO did not dispute she rented a room from AL.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

As a result, I find EO is an occupant as defined and has no rights or obligation under the Act. Therefore, EO was removed from the style of cause.

Issue to be Decided

Should the notice to end tenancy issued on September 2, 2014, be cancelled

Background and Evidence

The parties agreed the tenant was served with a notice to end tenancy with an effective vacancy date of September 12, 2014, for unpaid rent for March 2012.

The landlord testified that in March of 2011, the tenant withheld rent and in March 2012, the tenant gave him a money order to cover this outstanding rent. The landlord stated that he misplaced the money order and he contacted the tenant to see if a replacement

money order could be issued. However, he was told by the tenant that they could not find the receipt and was told that without the receipt a replacement money order could not be issued. The landlord was hopeful the money order or receipt would be found.

The landlord testified that he recently found the missing money order and when he went to cash it, the service clerk at Canada post told him that the issuer of the money order cancelled the original money order and collected the money in May 2012.

The landlord testified that the tenant lied to him and was deceitful when he cancelled the money order and kept the money, without paying the rent.

The tenant testified that it was not his problem the landlord lost the original money order. The tenant acknowledged the original money order was cancelled and that he received and kept the money that was intended for rent.

Analysis

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

In this case, the tenant cancelled the money order he issued to the landlord for rent after he was told by the landlord the money order had been misplaced. I find the action of the tenant was deceitful when they collected and kept the money, which was intended for rent. As a result of their actions, I find rent was outstanding at the time the notice to end tenancy was issued and was not paid within five days as required by the Act. I find the notice to end tenancy, issued on September 2, 2014 was a valid notice under the Act. Therefore, I dismiss the tenant's application to cancel the notice to end tenancy. The tenancy has legally ended in accordance with the Act.

Conclusion

The tenant's application is dismissed. The tenancy has legally ended in accordance with the Act.

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: October 31, 2014

Residential Tenancy Branch

