



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNSD, ERP, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to allow a tenant more time to make an application to cancel a notice to end tenancy, to cancel a notice to end tenancy, for return of all or part of the security deposit, to make emergency repairs for health and safety reasons, to make repairs to the unit, to allow a tenant to reduce rent for repairs and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed 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

In this case before me, the tenant is requesting to be allowed more time to make an application to cancel a notice to end tenancy which was received on November 5, 2014. The tenant applied on November 10, 2014, which was within the five days required under the legislation. Therefore, I find it is not necessary to consider this portion of the tenant's application.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balances of the tenant's applications are dismissed, with leave to re-apply.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 5, 2014, be cancelled?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenancy began approximately 5 years prior. Rent in the amount of \$930.00 was payable on the first of each month. A security deposit of \$465.00 and a pet damage of \$300.00 were paid by the tenant.

On February 19, 2014, the parties were at a dispute resolution hearing. At the hearing the parties entered into a settlement agreement for the landlord to make repairs to the rental unit. The tenant's application for a monetary order was dismissed.

On September 15, 2014, the parties were at a further dispute resolution hearing. On October 2, 2014, a decision was rendered, which granted the tenant a rent abatement in the amount of \$75.00 per month, beginning November 1, 2014. The tenant was also granted a further onetime rent abatement of \$102.50, to recover cost of emergency repairs they incurred in August 2014, and the filing fee from the landlord.

The parties agreed that on November 5, 2014, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, with an effective vacancy date of November 15, 2014. The parties agreed that the notice to end tenancy indicated that the tenant failed to pay rent for November 2014, in the amount of \$752.50 and the amount of \$930.00 for September 2014.

The parties agreed that the tenant paid the amount of \$752.50 within five days. The tenant agreed that they did not pay the amount of \$930.00, that was due and owing for September. The tenant stated they withheld September 2014, rent as they were going to complete emergency repairs. No repairs were completed.

Analysis

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

A tenant may dispute a notice to end tenancy if they have proof rent was paid, or if they have an order from an arbitrator giving them permission to keep all or a portion of rent or if they held part or all of the rent with prior notice to the landlord for the cost of emergency repairs.

In the case before me, the decision rendered on October 2, 2104, authorized the tenant under the Act, to withhold the amount of \$172.50 from November 2014 rent; this amount included the cost of emergency repair that the tenant incurred for repairing a door in August 2014. The balance of rent for October 2014, in the amount of \$752.50 was paid by the tenant within five days for receiving the notice to end tenancy.

However, the notice to end tenancy also included unpaid rent in the amount of \$930.00 for September 2014. I find the tenant did not have the authority under the Act, to withhold any rent for September 2014, and even after receiving the decision dated October 2, 2014, and after receiving the notice to end tenancy on November 5, 2014, failed to pay all rent owed.

A tenant cannot withhold rent simply because they feel it's justified. Therefore, I find the tenant breached section 26 of the Act, when they failed to pay rent for September 2014, in the amount of \$930.00.

As a result, I find the 10 Day Notice to End Tenancy for Unpaid rent issued on November 5, 2014, is a valid notice under the Act. Therefore, I find the tenancy has legally ended in accordance with the Act.

Therefore, I dismiss the tenant's application to cancel the notice to end tenancy, issued on November 5, 2014. As the tenant was not successful with their application they are not entitled to recover the cost of the filing fee from the landlord.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application is 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: December 04, 2014

Residential Tenancy Branch

