



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, MNR

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") and a monetary order for the cost of emergency repairs.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed that she had received the tenant's evidence and that she was able to view the contents of the tenant's digital evidence. The landlord confirmed not providing any evidence in advance of the hearing.

Thereafter the tenant and the landlord were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenant's application dealing with a request for a monetary order is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's application and dismissed that portion of the tenant's request for those orders, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel the Notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

Neither party submitted a copy of a written tenancy agreement, and there was no confirmation from either party at this hearing as to whether one existed. The landlord's witness read from a document, and the title began with the word "application", not tenancy agreement. The tenant submitted that the tenancy began in 2007 or 2008, and the landlord submitted that the tenancy began in 2007. The rental unit is a detached garage, and the landlord occupies the main home.

The tenant is a brother-in-law of the landlord and the parties were recently in dispute resolution dealing with a 1 Month Notice to End Tenancy for Cause issued by the landlord to the tenant. The tenant supplied the file number, and upon review, the Decision of January 7, 2015, issued by another Arbitrator, cancelled the 1 Month Notice as that Arbitrator decided that the landlord had not supported that the landlord had sufficient cause to end this tenancy.

It is interesting to note that in that Decision of January 7, 2015, the other Arbitrator mentioned that the landlord submitted a copy of a written tenancy agreement signed by the parties on April 3, 2010 for a 1 year fixed term tenancy beginning on May 1, 2010 that converted to a month to month tenancy on May 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month. That tenancy agreement was not before me for consideration; however, it appears that the tenancy agreement was signed well after this tenancy began.

The other Arbitrator also wrote that the landlord agreed to reduce the monthly rent to \$600 for the tenant to complete some work on the residential property.

In the present case, the landlord submitted that the tenant's monthly rent obligation is \$1200, not \$600, and that the tenant did not pay all the rent owed, when he paid \$600. The landlord listed \$600 owed as of January 1, 2015, on the 10 Day Notice. The landlord submitted further that she has to fight the tenant for monthly rent, that she is losing her health over this situation, and that the tenant has more vehicles than allowed.

In response, the tenant submitted he found the home for the landlord when she was struggling after a divorce, and that she, the landlord's children and the tenant moved into the residential property some time ago. The tenant submitted further that the home and detached garage were complete fixer-uppers, and that he has had to work on both homes extensively since the tenancy began.

The tenant submitted further that the parties' arrangement from the beginning was that the tenant would perform work in lieu of a full payment of rent, agreeing to pay \$600, and that if he had to buy supplies or building material, the tenant would deduct those expenses from the \$600 he owed each month. the tenant submitted that he is still doing extensive work on the home to this day.

The tenant's relevant documentary evidence included past payments of rent showing that rent of \$600 was paid, including for January 15, 2015 and photos of the rental unit and residential property contained on a USB stick.

Analysis

Under section 46 of the Act, a landlord may serve a tenant a 10 Day Notice to End Tenancy for Unpaid Rent if rent is unpaid on any day after the day it is due. This section goes on to say that if the tenant pays the overdue rent, the Notice has no effect.

In the case before me, I find the landlord submitted insufficient evidence to show that the tenant owes monthly rent of \$1200. After hearing from the parties and considering the landlord's statements at their dispute resolution hearing on January 6, 2015, noted in a Decision of January 7, 2015, by another Arbitrator, I find the evidence supports that the tenant's monthly rent payment has customarily been \$600 since the inception of the tenancy, and that the tenant redeems the balance of \$600 through work on the property. Neither party could describe the scope of the work to be done by the tenant before monthly rent would be restored or increased to \$1200, and there were no documents before me from the landlord which would show the scope of work to be done by the tenant. As the landlord bore the burden of proof to support that monthly rent was \$1200, I find that she did not.

Due to the above and to the tenant's evidence that he paid \$600 on January 4, 2015, prior to the Notice being issued, I find the landlord submitted insufficient evidence to support her 10 Day Notice that monthly rent of \$600 was owed on January 15, 2015.

I therefore order that the Notice dated and issued on January 1, 2015, be cancelled, with the effect that this tenancy continues until it may otherwise legally end under the Act.

As the tenant has been successful with his application, I allow him to recover the filing fee by making a deduction of \$50 from a future month's rent payment, informing the landlord when he is making this deduction.

Conclusion

The tenant's application seeking cancellation of the landlord's 10 Day Notice of January 15, 2015, is granted as I have ordered the Notice be cancelled.

The tenant is to withhold \$50 from a future month's rent payment for recovery of his filing fee paid for this application.

The portion of the tenant's application dealing with a request for a monetary order is dismissed, with leave to reapply.

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: February 9, 2015

Residential Tenancy Branch

