



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46; and
- b) To order the landlord to comply with the Act.

Service:

The Notice to End Tenancy is dated January 28, 2015 and the tenant confirmed it was served personally. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This hearing was confusing as the tenants first asserted they were challenging a Notice to End Tenancy for cause served on November 18, 2014. As I tried to ascertain the causes, the landlord said that he had served several notices to end tenancy, the latest being a 10 day Notice to End Tenancy for unpaid rent dated January 28, 2015. The tenants filed their Application on February 6, 2015. As their Application is out of time to dispute any of the previous Notices, I elected to proceed on the 10 day Notice dated January 28, 2015. The undisputed evidence is that the tenancy commenced in 2013, it is now a month to month tenancy, rent is \$750 a month and a security deposit of \$325 was paid in 2013. The tenants said that an ex boyfriend had been part of the initial tenancy and when a mother of a tenant moved in, he agreed to pay an extra \$100 a month in rent (from \$650 to \$750).

The landlord said that the tenants owed \$3,000 in back rent when he served the Notice

on January 28, 2015. The tenants disagreed with this amount but agreed they had not paid rent in full in November, December or January and had not paid any rent since receiving the Notice dated January 28, 2015. They said they had financial difficulties since the landlord has not completed the paperwork for them to qualify for assistance. They also noted that he constantly disturbs them and they request that he stop. They agreed to move out by the end of March 2015 and the landlord agreed to accept an Order of Possession for that date.

No documentary evidence was submitted prior to the hearing. On the basis of the solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the cause in this case is unpaid rent pursuant to a Notice to End Tenancy dated January 28, 2015. Although the tenants disputed the actual amount owed, I find they do have unpaid rent; they agreed in the hearing that they have been unable to pay rent for the past few months and have paid nothing since receiving the Notice on January 28, 2015.

Therefore, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated. Pursuant to the landlord's request in the hearing and as authorized by section 55 of the Act, I find the landlord entitled to an Order of Possession effective March 31, 2015. As discussed in the hearing, I caution the landlord to obey section 28 of the Act and ensure the tenants' peaceful enjoyment while they are residing in the unit. The tenants request that he not bang on their door or yell at them; however, they recognize his right to continue to do yard work there.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end. An Order of Possession is issued to the landlord effective March 31, 2015.

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: March 03, 2015

Residential Tenancy Branch

