



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OPR, OPC, MNR, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlords. The tenant applied to cancel a one month Notice to End Tenancy for cause and a 10 day Notice to End Tenancy for unpaid rent. The landlords applied for an order for possession and a monetary order for unpaid rent. The hearing was conducted by conference call. The landlords and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause be cancelled?

Should the Notice to End Tenancy for unpaid rent be cancelled?

Are the landlords entitled to an order for possession?

Are the landlords entitled to a monetary order for unpaid rent and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in the landlords' house in Surrey. The monthly rent is \$500.00, payable on the first of each month. The landlord testified that the tenant responded to an advertisement and paid the landlord a \$250.00 security deposit and \$400.00 towards March rent. There is no written tenancy agreement. The landlord said the tenant refused to sign a tenancy agreement and brought another person to live with her in the rental unit. The landlord testified that the rental unit was advertised as a non-smoking unit, but the male occupant who lives in the rental unit with the tenant smokes in the rental unit.

The landlord testified that the tenant failed to pay the balance of the rent due for March and on March 31, 2015 the landlord served the tenant with a one month Notice to End Tenancy for cause and a 10 day Notice to End Tenancy for unpaid rent. The Notices

were personally served to the tenant in the presence of an RCMP officer. The landlord testified that the tenant has not paid the outstanding rent for March and has paid no rent for April. The landlord said that as well that the tenant borrowed \$35.00 from the landlord and failed to repay it.

The tenant said that the landlords have been abusive towards her and that the rental unit is substandard. She said that she has had to call the police because the landlords have harassed and mistreated her. The tenant acknowledged that she has not paid all the rent for March and has paid no rent for April. She also acknowledged that she borrowed \$35.00 from the landlord. The tenant said that soon after she moved in the landlord told her that she would have to leave because the landlord's mother was going to move into the rental unit. She said this was a verbal notice. The tenant said at the hearing that she did not pay the rent because almost immediately after she moved in the landlord tried to get her to move. She also said she withheld rent because of the poor condition of the rental unit. The tenant did not submit any documentary evidence to show the condition of the rental unit.

The tenant acknowledged that she was served with the Notice to End Tenancy for unpaid rent as declared by the landlord. She filed her application for dispute resolution on April 7, 2015. Taking into account the dates when the Residential Tenancy Offices were closed, the tenant's application for dispute resolution was filed within the time provided to dispute a Notice to End Tenancy for unpaid rent. The tenant did not pay any rent after she received the Notice. At the hearing the tenant said she was prepared to pay the rent to the landlord for March and April as well as the borrowed sum of \$35.00.

Analysis

The *Residential Tenancy Act* provides by section 26 (1) that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any repairs and there has been no rent increase since commencement of the tenancy. The tenant has not paid all the rent for March and paid no rent for April. The tenant has not established that she has any basis for withholding rent payments and I find that he has not provided evidence of any ground that would excuse her from her obligation to pay rent. The tenant's application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

The landlord has applied for an order for possession and requested at the hearing that an order for possession be granted.

Section 55 of the *Residential Tenancy Act* provides as follows:

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.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

Because of my finding with respect to the Notice to End Tenancy for unpaid rent, there is no need to address the grounds for the one month Notice to End Tenancy or its validity and I make no findings with respect to the one month Notice.

The landlord is entitled to an award in the amount of the unpaid rent for March and April in the amount of \$600.00. I do not make any award with respect to the loan of \$35.00 because it is a matter that falls outside my jurisdiction under the *Residential Tenancy Act*.

The landlords are entitled to recover the \$50.00 filing fee for their application for a total award of \$650.00. I order that the landlords retain the \$250.00 security deposit that

they hold in partial satisfaction of this award and I grant the landlords an order under section 67 for the balance of \$400.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenant's application has been dismissed. The landlords have been granted an order for possession and a monetary order in the amount of \$400.00.

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: April 30, 2015

Residential Tenancy Branch

