



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated and received March 5, 2015. She claims that she offered to pay the rent demanded in the Notice but the landlord refused it.

Issue(s) to be Decided

Did the landlord refuse to accept the rent demanded in the Notice?

Background and Evidence

The rental unit is a one bedroom apartment in a nine unit apartment block.

The tenancy started in March 2008. The rent is \$750.00 per month, due on the first of each month. The landlord holds a \$375.00 security deposit.

The landlord testifies that the tenant stopped paying rent eight or nine months after the start of the tenancy. He says he has received rent from the tenant for years.

There was trouble in the building recently and so he issued the ten day Notice to the tenant and apparently issued Notices to other tenants as well. He acknowledges that after issuing the Notice the tenant came to him to pay rent but that he declined it because he wants her to leave.

For some reason not fully explained, the Notice to End Tenancy served by the landlord claims that the tenant failed to pay \$750.00 rent due February 1, 2015. There is no mention of any other back rent and no mention of March 2015 rent, which, I understand, has not been paid either.

The tenant testified that she had paid some rent over the last six or seven years but has not receipts. She says that after receiving the Notice in question she attempted to pay the \$750.00 demanded in it but the landlord refused.

Analysis

Section 46 of the *Residential Tenancy Act* provides:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may**
- (a) pay the overdue rent, in which case the notice has no effect, or**
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.
- (6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
 - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

(emphasis added)

It is implicit that a tenant subsection (4) above covers the situation where the tenant tenders the rent. A landlord may not avoid the effect of ss.(4) by merely refusing to receive the rent.

In this case, I find that is what has happened. The landlord was not at liberty to refuse rent and then be permitted to rely on the Notice as having ended the tenancy.

While the rent still remains owing, I find that the Notice has been rendered of no effect and I cancel it. The landlord is free to issue another Notice for the same or any other rent that is due.

Conclusion

The tenant's application is allowed. The ten day Notice to End Tenancy dated March 5, 2015 is cancelled. The tenant is entitled to recover the \$50.00 filing fee for this application and I authorize her to reduce her May 2015 rent by \$50.00 in full satisfaction of the fee.

This decision was rendered orally and 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 14, 2015

Residential Tenancy Branch

