



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI CNR OLC

Preliminary Issues

Upon review of the Tenant's application for Dispute Resolution I noted that the corporate Landlord's name had been misspelled adding an extra "T" in the first name. Accordingly, the style of cause was amended to reflect the correct spelling of the corporate Landlord's named, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on June 19, 2015 to dispute a rent increase, cancel a 10 Day Notice to end tenancy; and to obtain an Order to have the Landlord comply with the Act, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Tenant and the Landlord. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant been issued a rent increase?
2. Should the 10 Day Notice to end tenancy issued June 16, 2015 be upheld or cancelled?
3. Should the Landlord be ordered to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

The undisputed evidence was the Tenant and his co-tenant entered into a month to month tenancy that began on March 1, 2014. Rent of \$570.00 was payable on or before the first of each month and on March 1, 2014 the Tenants paid \$285.00 as the security deposit.

The Landlord testified that after the Tenant's roommate moved out the Tenant remained responsible for the full \$570.00 of rent. When the Tenant fell behind on paying the full rent amount the Landlord offered the Tenant a payment plan and the opportunity to move into a single room for a lower amount of rent.

The Tenant agreed to the payment plan and signed the written agreement on December 1, 2014; however, the Tenant refused to move into the smaller unit. In April 2015 the Tenant began to fall behind on the payment plan payments. The Landlord submitted that they have attempted to keep this Tenant housed and for a second time they offered him to move into a smaller unit and the Tenant refused to move again. As a result the Landlord issued the Tenant the 10 Day Notice on June 16, 2015.

The Tenant stated that everything the Landlord submitted was correct. He argued that other tenants in this SRO (single room occupancy) building have told him that he needed to fight to stay in his room because there was some type of SRO policy that a landlord could not charge more for a double room. He also argued that he has problems in small or confined spaces and did not want to move into a smaller room.

Upon review of the tenancy agreement the Tenant stated that he now understood that he was not issued a rent increase; rather, the rent of \$570.00 was what him and his co-tenant had agreed to pay. He also confirmed that he knew that now that his co-tenant had moved out he was solely responsible for the full rent.

The parties were given the opportunity to settle these matters. The Landlord submitted that they were no longer willing to work towards a settlement agreement given the

Tenant's failure to comply with the payment agreement and his refusal to move into a small room when offered on two occasions.

The Landlord testified that rent has not been paid in full for June, July or August 2015. Therefore, they wished to proceed with the 10 Day Eviction Notice and requested an Order of Possession.

The Tenant argued that rent had been paid in full and then stated that his August 2015 rent cheque was currently in his pocket.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding Payment of Rent

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement. .

Policy Guideline 13 provides that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Regarding the 10 Day Notice

Section 46 (1) of the *Act* provides that 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.

Section 46(4) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 55(1) of the *Act* provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the

Landlord makes an oral request for an Order of Possession during the scheduled hearing.

Payment of Rent

The undisputed evidence was the Tenant entered into a written tenancy agreement with a co-tenant which required them to pay \$570.00 per month rent. The Tenant was fully aware of the monthly rent amount payable and confirmed that he understood he was not issued a rent increase.

There was no evidence of a SRO policy regarding rental amounts for a double room. Even if there was such a policy it would not void or override a written tenancy agreement.

I accept the Landlord's submission that they continued to work with this Tenant offering a smaller rental unit for him to move into, at a lower rent, and a payment plan so the Tenant could get caught up on his rent payments.

As acknowledged by the Tenant, there was no evidence of a rent increase. Rather the Tenant was required to pay the \$570.00 monthly rent in accordance with his tenancy agreement once his co-tenant moved out, pursuant to Policy Guideline 13. Accordingly, the Tenant's request to dispute a rent increase is dismissed, without leave to reapply.

The 10 Day Notice

In this case the Tenant received the 10 Day Notice on June 16, 2015 and the effective date of the Notice was June 26, 2015. The Tenant filed an application to dispute the Notice on June 19, 2015, within the required timeframes set out in section 46 of the *Act*.

The undisputed evidence was the Tenant failed to make the payments towards his rental arrears in accordance with the repayment plan. The Tenant provided contradictory testimony as to if his rent had been paid in full for June, July and August 2015 and then stated that his August rent cheque was currently located in his pocket.

Based on the foregoing, I accept the Landlord's submission that the Tenant was fully aware of their intentions to assist him and when that failed they were seeking an eviction. The Tenant's rent and rental arrears remain unpaid in breach of section 26 of the *Act*.

I conclude the 10 Day Notice was issued in accordance with section 46 of the *Act*. In consideration of the Tenant's breach of section 26 of the *Act*, I find the 10 Day Notice to

be in full force and effect. Accordingly, I dismiss the Tenant's application to dispute the Notice, without leave to reapply.

Based on the forgoing, I grant the Landlord's oral request for an Order of Possession, pursuant to section 55(1) of the *Act*.

There was no evidence before me that would require me to issue the Landlord an order to comply with the *Act*, Regulation, or tenancy agreement. Accordingly, that request is dismissed, without leave to reapply.

Conclusion

The Tenant's application for Dispute Resolution was dismissed in its entirety, without leave to reapply. The Landlord's oral request for an Order of Possession was granted.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

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: August 18, 2015

Residential Tenancy Branch

