



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Village Green Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

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 or Utilities ("Notice") issued by the landlord and for recovery of the filing fee paid for this application.

The tenant and the landlord's agents (hereafter "landlord") 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, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants 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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Background and Evidence

I was not provided a written tenancy agreement; however, the undisputed evidence shows that this tenancy began on August 26, 2012, and that current monthly rent is \$811.00.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that the tenant was served with the Notice on June 16, 2015, by attaching the Notice to the tenant's door, listing an unpaid rent deficiency of \$3993.00 as of June 15, 2015. The effective move-out date listed was June 25, 2015.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on June 19, 2015, and the effective move out date is automatically changed to June 29, 2015, pursuant to section 53 of the Act.

The landlord submitted oral and documentary evidence showing that the amount listed on the Notice was for a total rent deficiency accumulated since August 2013, with the latest occurrence being a returned cheque of \$300.00 for May 2015.

The landlord asserted that since the issuance of the Notice, the tenant did pay rent for July and August, but did not pay the rent deficiency for May 2015, or the rest of the balance.

The landlord's relevant documentary evidence included, but was not limited to, a copy of the Notice, accounting records, and notices to the tenant regarding payments toward her ongoing rent deficiency.

In response, the tenant confirmed that the \$300.00 outstanding rent for May 2015 has not been paid and that there was a rent deficiency accumulated since 2013, but submitted that she had an agreement with the landlord to make payments towards the rent deficiency as she could. The tenant explained that she had developed health issues, resulting in a loss of income and an inability to make full rent payments. The tenant further explained that the matter of her grandmother's estate had not been settled and therefore a loan from her mother had not been forthcoming as of yet in order to pay the rent deficiency.

The tenant's relevant evidence was a copy of the Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or dispute the Notice within

five days. In this case, the tenant disputed the Notice by filing her application; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that she did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find the landlord submitted sufficient evidence to support their Notice and I therefore dismiss the tenant's application seeking cancellation of the Notice.

I therefore uphold the Notice and find it is valid and enforceable.

I have not granted the landlord an order of possession for the rental unit as the landlord did not make an oral request for the same at the hearing, as allowed under section 55(1) of the Act. If the tenant fails to vacate the rental unit, it is upon the landlord to seek an order of possession for the rental unit through dispute resolution.

Conclusion

The tenant's application seeking cancellation of the Notice and recovery of the filing fee is dismissed.

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 20, 2015

Residential Tenancy Branch

