



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on July 5, 2015, to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property, issued on June 28, 2015, for the cost of emergency repairs and a monetary order.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary matter

In this matter the two tenants PD, YB are listed in the application; however, they do not share a joint tenancy and have separate tenancy agreement for separate rental units.

Each tenant under a separate tenancy agreement is required to file his or her own application and pay the applicable fees. As the application indicates the dispute address is for the tenant PD tenancy, I will only consider evidence related that that tenancy.

Therefore, I have amended the tenant’s application to remove YB as an applicant. YB is entitled to file their own application for dispute resolution. This does not extend any statutory deadlines under the Act.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the

tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End. The balance of the tenant's application is dismissed, with leave to re-apply.

Issue to be Decided

Should the Notice be cancelled?

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Background and Evidence

The parties agreed the tenant received a Notice to end tenancy for unpaid rent on June 29, 2015, with an effective vacancy date of July 15, 2015.

The landlord's agent testified that the tenant did not pay rent for July 2015 and has not paid any rent for August 2015, September 2015.

The tenant testified that they had permission for the prior property manager to deduct the cost of emergency repairs. The tenant filed as evidence a hand written invoice in the amount of \$375.00. The tenant stated that they have not filed any other invoices or receipts.

The tenant acknowledges rent was not paid for August 2015 and September 2015 as they did not believe the agent was acting on behalf of the landlord.

The landlord's agent testified that they have spoken with the tenant on several occasions and not once did the tenant inform them of any such agreement with the previous property manager or any emergency repair. The agent stated that there is nothing in the tenant's file giving the tenant permission to deduct any money from rent or that there was an emergency repair completed.

RS, the owner/landlord testified that they took their new agent to meet all the tenants and there was no reason for the tenant not to pay rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *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.*

...

In this case, the evidence of the tenant was that they had permission to deduct the amount of \$375.00 from rent for emergency repairs from the previous property manager. The evidence of the landlord's agent was that there is no record of any such agreement or emergency repair.

I find without further evidence from that tenant that they have failed to prove they had permission of the landlord's agent to deduct the amount of \$375.00 for the invoice presented. Further, the tenant has not provided any evidence that the invoice was paid, such as bank records or a cancelled cheque.

Further, even if I accept the tenant's evidence that they had permission to deduct the amount of \$375.00, which I do not, there was no evidence of any other amounts that they were entitled to deduct to equal the total amount of rent of \$675.00, as no rent was paid.

Further, the tenant's continues to withhold rent for August 2015, and September 2015, although the tenant's evidence was they did not pay rent because they did not believe the landlord's agent was the owner's agent. I find that unreasonable and not credible as the evidence of the owner/landlord was that they introduced the new agent to the tenants when they took over the responsibility. Further, the tenant in the alternative could have paid rent, by cheque, money order or e-transfer directly to the owner.

I find the tenant has failed to prove that rent was paid or that they had the authority under the Act, to withhold rent. I find the Notice issued on July 5, 2015, if a valid notice under the Act and the tenancy legally ended on July 15, 2015. I find the tenant is now overholding the rental premises. Therefore, I dismiss the tenant's application to cancel the Notice, issued on July 5, 2015.

As the tenancy had ended based on the 10 Day Notice to End Tenancy for Unpaid Rent, issued on July 5, 2015, I find it not necessary for me to consider the merit of the 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on June 28, 2015.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Order of possession for the landlord

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 find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: September 18, 2015

Residential Tenancy Branch

