



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”), and a 2 Month Notice to End Tenancy for the Landlord Use of Property (the “2 Month Notice”). The Tenant also applied to recover the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. No issues were raised by the parties in relation to the service of the Tenant’s Application and the parties’ documentary evidence served to each other prior to this hearing.

Preliminary Issues

At the start of the hearing, the Landlord and Tenant argued about whether this was a fixed term or month to month tenancy. The parties explained that this issue had arisen during a previous hearing with a different Arbitrator (the file number for which is documented on the front page of this decision). In this respect, I informed the parties that *Res judicata*, the legal doctrine preventing the rehearing of an issue that has been previously settled by a judicial decision, applies.

This is because in this case, there was a final and binding earlier decision between these parties on the legal issue of whether the tenancy was a fixed term or a month to month. Therefore, I am bound by the finding of the previous Arbitrator and declined to make any further findings on this particular issue.

During the hearing the parties agreed that the Tenant had been served with the 2 Month Notice dated September 18, 2015. The Landlord provided a copy of the Notice which was served to the Tenant into evidence. The Tenant testified that the 2 Month Notice was not valid because it did not contain the reason for ending the tenancy.

Section 52(d) of the Residential Tenancy Act (the "Act") requires that a notice to end tenancy must state the grounds for ending the tenancy. As the Landlord served the Tenant with a 2 Month Notice which did not specify the reason for ending the tenancy on the second page of the 2 Month Notice, I find that the 2 Month Notice is not valid and is hereby cancelled.

In relation to the 10 Day Notice, the Tenant acknowledged receipt of the Notice and I determined that the Tenant had applied to dispute the Notice within the five day time limit stipulated by Section 46(4) (b) of the Act. The Landlord testified that the Tenant had failed to pay rent for July and August 2015 in the amount of \$2,850.00. The Tenant acknowledged that this amount had not been paid by her within the five day time limit after she had been served with the 10 Day Notice. The Tenant stated that she had withheld this amount because she was of the understanding that these two months related to her compensation under a previous 2 Month Notice that had been served by the Landlord which was cancelled at the previous hearing.

The Tenant was informed that Section 51 of the Act only allows one month's free rent as compensation; and in any case the previous 2 Month Notice had been cancelled by the previous Arbitrator. Therefore, the Tenant did not have any authority under the Act to withhold rent for July and August 2015. Furthermore, Section 26(1) of the Act states that a tenant must pay rent due under a tenancy agreement whether or not the Landlord complies with the Act.

When the Tenant was asked why she did not pay rent for July and August 2015 when she became aware that the previous 2 Month Notice had been cancelled, which was before the 10 Day Notice was issued, she stated that she made attempts to make payment and have talks with the Landlord as she could not pay this amount all in one go. The Tenant testified that the Landlord however was refusing to talk with the Tenant about a payment plan to pay her the rental arrears.

The Landlord indicated that she wanted the tenancy to end and requested an Order of Possession. I offered the parties an opportunity to settle this matter by way of mutual agreement. The parties discussed the issues between them, turned their minds to compromise and decided to end the tenancy mutually between them.

Settlement Agreement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. Both parties agreed to settlement of all of the issues in this tenancy under the following terms:

1. The parties agreed that the tenancy will end on December 31, 2015 at 1:00 p.m.
2. However, this date is contingent on the Tenant making full rent payment as follows: July and August 2015 rent in the amount of \$2,850.00 must be paid by 5:00 p.m. on November 24, 2015. December 2015 rent in the amount of \$1,425.00 must be paid in accordance with the tenancy agreement and the Act, namely by 12:00 p.m. December 1, 2015.
3. If the Tenant makes these payments the tenancy will end on December 31, 2015. However, if the Tenant does not make any of the payments by the specified deadlines, the Landlord will be able to end the tenancy using the attached Order of Possession which is effective two days after service on the Tenant.
4. The parties understood that if the Tenant makes the above rental payments the attached Order of Possession can only be used to enforce the ending of the tenancy on December 31, 2015 at 1:00 p.m., if the Tenant fails to vacate the rental unit on this date and time. If the Tenant does not make either of the rent payments, the Landlord may use the attached Order of Possession to enforce the ending of the tenancy two days after service of the order on the Tenant.
5. The Landlord agreed that the Tenant can end the tenancy earlier providing the Tenant gives the Landlord written notice of the earlier date. In this event, the Landlord agreed to prorate any rent already paid by the Tenant.

The parties confirmed their understanding and voluntary agreement of resolution in this manner both during and at the conclusion of the hearing. Copies of the Order of Possession are attached to the Landlord's copy of this Decision. As the Tenant agreed to end this tenancy mutually with the Landlord, I dismiss the Tenant's Application to recover the filing fee. This file is now closed.

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: November 19, 2015

Residential Tenancy Branch

