



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

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 notice to end tenancy for cause, to recover the filing fee from the Landlord, and for “Other” issues, namely for the Landlord to complete repairs to the rental unit.

The Landlord appeared for the hearing at the scheduled time. The Landlord provided affirmed testimony and made a request for an Order of Possession to end the tenancy. The Landlord also stated that the Tenant had not paid rent for January 2016.

The Tenant appeared for the hearing after the Landlord started to give evidence. The Tenant then provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings.

The Landlord confirmed receipt of the Tenant’s Application and the Tenant confirmed receipt of the Landlord’s documentary evidence. The Tenant also confirmed receipt of the 1 Month Notice to End Tenancy for Cause (the “Notice”) on October 19, 2015. The Notice was provided into evidence and the reason for ending the tenancy was because the “security or pet damage deposit was not paid within 30 days as required by the tenancy agreement”.

The parties acknowledged that the Landlord had requested a security deposit from the Tenant at the start of the tenancy pursuant to Section 17 of the *Residential Tenancy Act* (the “Act”). The Landlord completed a tenancy agreement which required the Tenant to pay the Landlord a security deposit of \$600.00 before the tenancy began. Even though the Tenant did not sign the tenancy agreement, the Tenant acknowledged that the tenancy agreement required the payment of a security deposit as documented in the written agreement prepared by the Landlord. The Tenant testified that she has not paid the security deposit because the Landlord failed to complete a move in condition

inspection, complete repairs to the rental unit, and was not provided with a storage and elevator key well into the tenancy. The Tenant also explained that she had not paid rent for January 2016 as she was waiting for the outcome of this hearing. The Tenant confirmed that to date she has not paid the Landlord the security deposit of \$600.00 requested at the start of the tenancy.

The Tenant was informed that the Act does not allow a tenant to withhold a security deposit due to a breach of the Act by the Landlord, such as a failure to complete a condition inspection report or repairs to a rental unit. Section 26(1) of the Act also does not allow a tenant to withhold rent for a breach of the Act by the Landlord. Therefore, the Tenant was informed that the Act does not allow her to withhold rent pending the outcome of dispute resolution proceedings.

The Landlord stated that she wanted to end the tenancy because the Tenant had not paid the security deposit and January 2016 rent. However, the Landlord was willing to mutually agree to end the tenancy with the Tenant as long as the Tenant paid January 2016 rent.

I informed the Tenant that I was only obligated to make a decision on her Application to cancel the Notice based on the failure to pay the security deposit and that unpaid rent was not a matter before me in this hearing. However, the Tenant decided that it was better for her to mutually end the tenancy with the Landlord.

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.

The Landlord and Tenant agreed to end the tenancy at 1:00 p.m. on **January 31, 2016** at which point the Tenant is required to vacate the rental suite, unless otherwise decided by the parties in writing. The Landlord is issued with an Order of Possession effective for this date and time. This order may be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit in accordance with the above agreement.

The Tenant is still liable to pay rent and promised to pay rent to the Landlord for January 2016 after this hearing. The Landlord still retains her right to remedies under the Act to end the tenancy earlier if the Tenant fails to pay rent.

The parties confirmed their agreement to voluntary resolution in this manner both during and at the end of the hearing. As the Tenant mutually agreed to end this tenancy with the Landlord, I dismiss the Tenant's request to recover the filing fee from the Landlord. As the tenancy is now ending, I also dismiss the Tenant's Application for "Other" issues, namely repairs to the rental unit as these are now moot issues.

Conclusion

The parties mutually agreed to end this tenancy **at 1:00 pm on January 31, 2016**. The Landlord is issued with an Order of Possession effective for this date and time.

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: January 04, 2016

Residential Tenancy Branch

