



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, OPC, MNDC, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant. The landlord had arranged for a witness however the witness was not called upon to provide any testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent or for cause; to a monetary order for a security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on October 27, 2014 for a month to month tenancy beginning on November 1, 2014 for a monthly rent of \$900.00 due on the 31st of each month with a security deposit of \$450.00 required;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2015 with an effective vacancy date of November 11, 2015 citing the tenant had failed to pay a security deposit in the amount of \$450.00 that was due on November 1, 2014; and

- A copy of a 1 Month Notice to End Tenancy for Cause dated November 1, 2015 with an effective vacancy date of November 30, 2015 citing the tenant had failed to pay a security deposit within 30 days as required by the tenancy agreement.

The landlord testified the 1 Month Notice to End Tenancy for Cause was provided to the tenant as part of the evidence package she served on the tenant after submitting her Application for Dispute Resolution.

The parties agreed the tenant had as of the date of this hearing not paid the landlord any amount of the security deposit.

Analysis

Section 46 of the *Act* states 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 on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

However, the 10 Day Notice issued to the tenant by the landlord in the case before me was altered by the landlord to read the tenant had failed to pay the security deposit. As a security deposit is not rent, the landlord could not use a 10 Day Notice to end the tenancy for an unpaid security deposit.

As such, I cancel the 10 Day Notice to End Tenancy issued on November 1, 2015.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

However, in order to end the tenancy for this reason the landlord was required to serve a 1 Month Notice to the tenant prior to applying for an order of possession based on the Notice. As per the landlord's testimony that the Notice was provided to the tenant as part of her evidence package, I find the landlord has not served the tenant with a 1 Month Notice.

As such, I find the 1 Month Notice to End Tenancy for Cause issued on November 1, 2015 provided as part of the evidence in the landlord's Application for Dispute Resolution is not an enforceable notice and I order this Notice to be cancelled.

In regard to the issue of the outstanding security deposit I order that the tenant is put on notice that she has 30 days from the date of this hearing to provide the landlord with a security deposit in the amount of \$450.00 or the landlord may issue a new 1 Month Notice to End Tenancy for Cause for the tenant's failure to pay the deposit.

Conclusion

Based on the above I grant the tenant's Application for Dispute Resolution and I dismiss the landlord's Application for Dispute Resolution, in its entirety.

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 07, 2016

Residential Tenancy Branch

