



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing and confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on November 01, 2013. Rent for this unit was \$750.00 per month; however, the landlord reduced the rent to \$725.00 per month in January, 2015. Rent is due on the 1st day of each month. The landlord testified that he allowed the tenant the first week of each month to pay the rent.

The landlord testified that the tenant failed to pay rent in January, February, March and April, 2015. The landlord forgave this outstanding rent. The tenant did pay rent for the next four months; however, only paid half the rent due for September, 2015. This left an outstanding balance of \$345.00 for September. No rent has been paid since that time. The tenant now owes rent from September, 2015 to January 2016 to an amount of \$3,245.00. The tenant was served

in person on November 05, 2015 with a 10 Day Notice to End Tenancy for unpaid rent. This Notice informed the tenant that they had five days to pay the rent of \$1,795.00 or dispute the Notice or the tenancy would end on November 16, 2015. The landlord testified that the tenant has not paid the rent owed.

The landlord orally requested at the hearing that the 10 Day Notice be allowed and an Order of Possession issued to be effective as soon as possible.

The tenant agreed that she has not paid the rent but testified that she does have part of it saved up. The tenant testified that the landlord informed the tenant that if she paid \$2,250.00 she could stay until the spring. The tenant did not trust the landlord so did not want to pay the rent owed until after this hearing had taken place. The tenant seeks to have the 10 Day Notice set aside and for the tenancy to continue.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states:

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.

The tenant did not dispute that rent has not been paid since September, 2015 and that the amount of \$3,245.00 is outstanding. The tenant did not present any evidence to show that she has a right under the *Act* to deduct all or a portion of rent. Consequently, I am satisfied that the tenant failed to pay the rent owed within five days of being served the 10 Day Notice and has failed to pay any further rent since the 10 Day Notice was served upon the tenant.

It is therefore my decision that the tenant has breached s. 26 of the *Act* and failed to pay rent since September, 2015. Consequently, I uphold the 10 Day Notice to End Tenancy and the tenant's application to cancel the 10 Day Notice to End Tenancy is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

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.*

The landlord has orally requested an Order of Possession at the hearing. Having upheld the Notice to End Tenancy I will grant that Order. The effective date on the Notice to End Tenancy in this matter was November 16, 2015. As that date has since passed, I grant the landlord an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY dismiss the tenant's application without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This Order must be served on the tenant, if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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 12, 2016

Residential Tenancy Branch

