Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, CNR, CNL, MT, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent.

The tenant's application is a request to cancel a Notice to End Tenancy for nonpayment of rent, a request to cancel a two month Notice to End Tenancy for landlord use, a request for more time to dispute a Notice to End Tenancy, and a request for recovery of the filing fee.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

The issues are whether to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent and whether to cancel or uphold a Notice to End Tenancy that was given for landlord use.

Background and Evidence

This tenancy began on February 20, 2016 with a monthly rent of $800.00 due on the first of each month.

The tenants failed to pay the full April 2016 rent and therefore on April 17, 2016 the landlord personally served the tenants with a 10 day Notice to End Tenancy.

The landlord testified that the full April 2016 rent is still outstanding, and the tenants have paid no rent since that date and therefore as of today's date there is a total of $2400.00 in rent outstanding.

The landlord therefore stated that she is requesting an Order of Possession for as soon as possible.

The tenant testified that they did not pay the April 2016 rent, however they offered to pay $400.00 of the rent and requested that the landlord use the security deposit for the remainder, however the landlord refused and gave them a 10 day Notice to End Tenancy.

The tenant further testified that they have paid no further rent, as they were supposed to get one month free rent due to receiving a two month Notice to End Tenancy.

Analysis

Section 21 of the Residential Tenancy Act states:

> **21** Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

In this case, therefore, since the landlord did not give the tenants written consent to apply the security deposit towards rent, the tenants did not have the right to apply their security deposit towards the April 2016 rent.

Further, section 46 of the Residential Tenancy Act states:

> **46** (1) 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 effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Therefore in this case, since the tenants did not pay the full rent, or offer to pay the full rent for the month of April 2016, the landlord had the right to give a 10 day Notice to

End Tenancy, and I will not cancel the Notice to End Tenancy, and will be issuing an Order of Possession to the landlord.

Since this tenancy is ending pursuant to the 10-day Notice to End Tenancy there is no need for me to make a finding on the validity of the two month Notice to End Tenancy.

Further since the tenancy has ended due to a 10 day Notice to End Tenancy, the landlord is no longer required to give the tenants their last month, rent free.

Conclusion

The tenant's application is dismissed in full, without leave to reapply.

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

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: June 06, 2016

_____
Residential Tenancy Branch