



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

On May 20, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the Notice) dated May 16, 2016, be cancelled. The Tenant also requested a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Preliminary and Procedural Issues

Rule 2.3 of the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's application is whether or not the tenancy will continue. Further, the remainder of the relief being sought by the Tenant is monetary in nature. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's application to cancel the Notices to end tenancy, with leave to reapply for the monetary claim at a later date.

Issues to be Decided

- Should the 10 Day Notice To End Tenancy For Unpaid Rent dated May 16, 2016, be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee for the hearing?

Background and Evidence

The Landlords and Tenant testified that the tenancy began as a fixed term tenancy starting on November 1, 2015, continuing until November 1, 2016. Rent in the amount of \$860.00 is payable on the first of each month. The Tenant paid a \$430.00 security deposit to the Landlords.

The Landlords testified that on February 22, 2016 the Tenant complained of a bad odour in her rental unit. The Landlord investigated and a resident in the unit next to the Tenant's unit was found deceased. The Landlord was prevented from dealing with the issue for a number of days due to a police murder investigation.

The Landlords testified that the Tenant did not pay rent for the month of March 2016. The Landlords testified that there was no agreement or discussion with the Tenant permitting the Tenant to not pay rent for March 2016. The Landlord provided documentary evidence of a letter sent to the Tenant dated April 5, 2016. The letter states that the rent cheque for March was NSF and that the rent payment needs to be made good.

The Landlords testified that on April 8, 2016, J.B. met with the Tenant regarding the unpaid March rent and the parties reached an oral agreement that the Landlord would reduce the rent owing for March 2016, in the amount of \$360.00 to cover the Tenant's dry cleaning costs and for the inconvenience caused to her tenancy. The Landlords testified that the agreement included the condition that the Tenant would withdraw her application for dispute resolution with the Residential Tenancy Branch.

The Landlord has provided documentary evidence of a money order received from the Tenant in the amount of \$500.00 dated April 8, 2016. The Landlords also provided documentary evidence of letters that were sent to the Tenant regarding the agreement reached by the parties. A letter addressed to the Tenant dated April 13, 2016, states "further to our conversation on the phone the other day, I need to let J.B. know when you have phoned to cancel the hearing". A letter addressed to the Tenant dated May 15, 2016, states "J.B. just mentioned to me yesterday that he has not heard from you yet about cancelling the dispute hearing". The letter states that if the Tenant does not give the Landlord verbal or written Notice that the hearing is cancelled, the Landlord will issue a 10 day Notice to vacate.

The Landlords testified that the Tenant did not fulfill the agreement because she was proceeding with the dispute hearing and therefore the Landlord considered that she now owes \$360.00 for rent for March 2016.

The Landlords provided documentary evidence of a letter sent to the Tenant on May 16, 2016, stating that since the Tenant has decided not to rescind the dispute resolution hearing, and has only paid \$500.00 for rent for the month of March 2016, the Landlord is issuing a 10 Day Notice to End Tenancy. The Landlord requested the Tenant to pay the \$360 owing for March rent or apply for dispute resolution.

The Landlords testified that the 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated May 16, 2016, was then served on the Tenant.

The Tenant testified that she did not pay the rent for March 2016, because the apartment manager M.J. told her that she did not have to pay it.

The Tenant testified that she did meet with the Landlord J.B. and did reach an oral agreement with J.B. to reduce her rent for March 2016, in the amount of \$360.00. However; the Tenant testified that there was no agreement that she would cancel the dispute hearing. The Tenant testified that the Landlord threatened to kick her out if she did not accept the deal.

Section 46 of the Act states that 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.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the Notice.

Analysis

Based on the evidence before me, the testimony of the Landlords and Tenant, and on a balance of probabilities, I find that the Tenant did not pay the rent to the Landlord for the month of March 2016, when it was due under the tenancy agreement. The rent cheque for March was returned as non-sufficient funds.

I find that the Landlord and Tenant reached an oral agreement on April 8, 2016, for reduced rent as compensation for dry cleaning and inconvenience to the Tenant. The Tenant paid the Landlord a monetary order on the same day in the agreed upon amount of rent after the deduction of \$360.00.

The Tenants evidence is contradictory, as she testified she was told she did not have to pay any rent for March, and then she testified that when the Landlord met with her to recover rent for March 2016; she agreed to pay the Landlord \$500.00 for rent.

The Landlords provided documentary evidence of letters sent to the Tenant that the Tenant was expected to fulfill the terms of the oral agreement regarding the cancellation of the dispute hearing, and I find that it more likely than not that the oral agreement reached by the parties to settle the matter included the condition that the Tenant cancel the hearing.

I find that the Tenant did not fulfill the agreement and I find that the Landlords issued a valid Notice To End Tenancy Due for Unpaid Rent in the amount of \$360.00.

The outstanding rent of \$360.00 became due on May 16, 2016, when the Landlords sent the Tenant a letter asking for payment, along with the Notice.

Section 26 of the Act states that 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.

I find that the Tenant did not have a right under the Act to deduct \$360.00 of the rent owing due to emergency repairs or due to an order from an Arbitrator.

I find that the Tenant did not pay the rent within five days of receiving the Notice, and I dismiss the Tenant's application to cancel the Notice dated May 16, 2016. The tenancy is ending.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective at 1:00 p.m. on June 30, 2016. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant did not pay a fee for the hearing and is not entitled to recover any cost for the application for the hearing.

Conclusion

The Tenant failed to pay the rent within 5 days of receiving the 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated May 16, 2016.

The Tenants application to dispute the Notice is cancelled. The Tenancy is ending.

The Landlord is granted an order of possession effective at 1:00 p.m. on June 30, 2016.

The Tenant has leave to reapply for her claim for compensation that was severed from this hearing.

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 24, 2016

Residential Tenancy Branch