



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

On June 7, 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") be cancelled.

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

Neither party provided a copy of the 10 Day Notice To End Tenancy For Unpaid rent or Utilities issued to the Tenant by the Landlord. I requested the Landlord to send a copy of the Notice to me at the end of the hearing. The Landlord provided a copy of the Notice. I note that there is no date provided on the Notice.

The Landlord identified that his last name is not spelled correctly on the Tenant's application and requested that it be corrected. The Tenant did not oppose the correction, and I granted the Landlords request.

Issues to be Decided

Is the tenancy ending due to non-payment of rent?

Is the Notice an effective Notice?

Background and Evidence

The parties testified that the tenancy began on December 15, 2015, as a month to month tenancy. Rent is due each month in the amount of \$975.00.

The Landlord testified that there is no written tenancy agreement. The Landlord testified that the oral agreement with the Tenant requires the Tenant to pay rent on the first day of each month. The Landlord testified that the Tenant mentioned that she may face difficulty paying rent on the first day of the month and that he discussed options of paying rent with a credit card or using a payday loan service to ensure the rent is paid on time. The Landlord submits that he did not agree that rent could be paid on the 15th day of each month.

The Landlord testified that the Tenant did not pay the rent for June 2016, when it was due. The Landlord issued a 10 Day Notice To End Tenancy For Unpaid Rent or Utilities dated June 3, 2016, (the Notice) to the Tenant on June 3, 2016, in person. The Notice indicates that the Tenant failed to pay \$975.00 due on June 1, 2016.

In support of his testimony, the Landlord referenced documentary evidence of a receipt issued when the Tenant moved in on December 16, 2015. The receipt for \$975.00 states it is for ½ rent for December 2015, plus the security deposit. The Landlord submits that the receipt supports his testimony that the rent is due on the first day of the month, because if rent was due on the 15th, the Tenant would have been required to pay a full month of rent and the security deposit.

The Tenant testified that she understood that her rent is due on the 15th day of each month. She submits that she had a job that paid her on the 15th day of each month and because of cash flow issues she discussed this problem with the Landlord. She submits that the Landlord was not happy about the discussion but she feels they reached an agreement that allows her to pay rent on the 15th day of each month.

The Tenant testified that she has a new job and is agreeable to start paying the rent on the first day of each month.

The Tenant provided documentary evidence of receipts showing the dates of each month when she paid the rent.

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.

The Landlord requested an Order of Possession if the Tenant's application to cancel the Notice is dismissed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 13 of the Act states that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

The Landlord breached section 13 of the *Act* by not preparing a written tenancy agreement and not providing a copy to the Tenant within 21 days after the agreement was made.

The Landlord has the onus to prove the allegation within the Notice. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

There is no written tenancy agreement and there is no documentary evidence from the Landlord that he addressed the issue by giving a written warning about the late rent payments during the six month period of time in question. The Tenant has provided receipts for rent payments that establish a pattern of paying the rent on or shortly after the 15th day of each month. Furthermore the Notice issued by the Landlord does not meet the form and content requirements of section 52 of the *Act* because it is not dated.

The Tenant's application to cancel the Notice is granted. I cancel the 10 Day Notice To End Tenancy For Unpaid rent or Utilities.

The tenancy continues until ended in accordance with the Act.

Conclusion

I cancel the 10 Day Notice To End Tenancy For Unpaid rent or Utilities. The tenancy continues until ended in accordance with the Act.

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: July 04, 2016

Residential Tenancy Branch