



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlords filed their Application requesting an order of possession due to unpaid rent or utilities.

The Tenant filed her Application requesting to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and to recover the cost of the Application for the hearing.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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 Matters

The Tenant did not provide any documentary evidence when she made her application on July 25, 2016. The Tenant testified that she submitted her evidence to the Residential Tenancy Branch on September 1, 2016; 1 day prior to the hearing. The Tenant's evidence is not before me. The Tenant requested that the hearing be adjourned to a later date so that her evidence can be received and considered.

The Tenant testified that she sent the evidence in late because she has been going through a stressful time. She testified that she is having health difficulties and has been dealing with a sick parent.

Residential Tenancy Branch Rules of Procedure 3.1 and 3.15 states that evidence must be received by the other party not less than 14 days prior to a hearing and a respondent's evidence must be received by the RTB and the applicant not less than 7 days prior to the hearing.

Residential Tenancy Branch Rules of Procedure 3.17 states that evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15, may or may not be considered depending on whether the party can show the Arbitrator that it is new and relevant evidence and that it was not available at the time their application was made.

The Landlords were asked whether or not they would be in agreement to adjourn the hearing to a later date and they responded that they are not in agreement. The Landlords testified that the Tenant owes them thousands of dollars and they want the hearing to proceed to get an order of possession.

The Tenants request for an adjournment was denied. I find that the Tenant had more than a month to provide the documentary evidence to support her application. I do not accept that her stress and dealing with a sick parent justifies being granted an adjournment. In addition, the Landlord's may suffer a further loss if the hearing is delayed.

The hearing continued and the Tenant had the opportunity to provide direct testimony to the issues.

The Tenant submits that she never received all of the evidence disclosed by the Landlord. She testified that she received 45 pages of evidence from the Landlord's by registered mail, but never received additional evidence.

The Landlords testified that they sent two packages of evidence to the Tenant using registered mail. The Landlords have provided documentary evidence of two Canada Post registered mail receipts. The receipts show that registered mail was sent to the Tenant at the Tenants address on July 28, 2016, and August 16, 2016.

Section 90 of the *Act* states that a document served by registered mail is deemed to be received on the 5th day after it is mailed.

After considering the testimony and evidence of the parties, I find it is more likely than not that the Tenant received the evidence from the Landlord. The Landlords evidence is accepted.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord provided documentary evidence of the tenancy agreement. The tenancy agreement indicates that the tenancy began on October 3, 2015. Rent in the amount of \$1,800.00 is payable on the fifth day of each month. The Tenant was required to pay a \$900.00 security deposit to the Landlord.

The Landlord testified that the Tenant is continually late paying rent and often pays rent in instalments.

The Landlords submit that the Tenant was required to pay \$18,000.00 in rent for the first 10 months of the tenancy, but has only paid \$15,000.00. The Landlord has provided documentary evidence setting out the payments that were received from the Tenant.

The Landlords issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 15, 2016. The Landlords testified that the 10 Day Notice was served to the Tenant by putting it in the Tenant's mailbox. The 10 Day Notice indicates the Tenant owes 3,650.00. The Landlords testified that the amount included \$650.00 for the remainder of the unpaid security deposit.

The 10 Day Notice states that the Tenant has five (5) days to pay the rent and utilities to the Landlord or file an Application for dispute resolution.

The Landlord testified that the Tenant did not pay the outstanding amount of rent within 5 days after she received the 10 Day Notice.

The Tenant testified that she received the 10 Day Notice on July 18, 2016. The Tenant applied for dispute resolution within the required timeframe.

The Tenant testified that the parties entered into a type of purchase agreement and that there is a dispute. She submits that the Landlord was threatening her and harassing her to sign a mutual agreement to end the tenancy and that she did not agree to sign it.

The Tenant testified that she owes the Landlord rent, but she is not sure the exact amount. She testified that she "sat on the rent" and did not pay it because of the dispute she was having with the Landlords.

The Tenant asked whether she could stay if she paid the rent money she owed to the Landlord's. The Landlord's declined the Tenant's proposal and are seeking an order of possession.

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.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not pay the outstanding rent that was owing to the Landlord within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or

Utilities dated July 15, 2016. I find that the Tenant did not have a right under the *Act* to withhold the rent.

The tenancy has ended. I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Tenant was not successful with her application, I decline to award the recovery of the filing fee.

Conclusion

The Tenant failed to pay the rent within 5 days of receiving the 10 Day Notice. The tenancy has ended.

The Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant.

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: September 02, 2016

Residential Tenancy Branch