



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, AAT, AS

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 2, 2016 (the "Notice"), an Order that the Tenant or his guests have access to the rental property, an Order permitting the Tenant to sublet or assign the rental unit and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision

Preliminary Matter

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the Tenant's other claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The Tenant's other claims are unrelated in that the basis for them rests largely on other facts not germane to the question of whether the Landlord can establish the grounds for ending this tenancy as set out in the Notice. Further, in the event the tenancy is ended, the relief sought becomes irrelevant. Consequently, I exercise my discretion to dismiss the balance of the Tenant's claims.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's counsel stated that this six month fixed term tenancy began May 1, 2015. Monthly rent was payable in the amount of \$1,100.00.

The Tenant failed to pay rent for the month of August 2016 and in response the Landlord issued the Notice on August 2, 2016. The Landlord's counsel stated that the Tenant was personally served on August 2, 2016.

The Tenant applied for dispute resolution on August 5, 2016.

The Landlord's counsel confirmed that the Tenant failed to pay rent the outstanding rent as provided for on the Notice and also failed to pay rent for September 2016.

The Tenant confirmed that he received the Notice on August 2, 2016. The Tenant further confirmed that he did not pay his August or September rent.

The Tenant stated that he did not pay rent because the "real Landlord was not speaking to [him]" and he did not know whether the Landlord's spouse was in fact the Landlord's spouse.

The Tenant further stated that the Landlord refused to allow him to pay by cheque or email transfer and that she insisted on cash payments. He also testified that she refused to give him receipts for his cash payments. The Tenant failed to submit any evidence to show he paid the August or September rent.

Analysis

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

The Tenant conceded that he has not paid the outstanding rent. Under section 26 of the *Residential Tenancy Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent. Accordingly, I find the Landlord has met the standard of proof to prove the Notice should be upheld.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession 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.

Conclusion

The Tenant failed to pay rent as required by the tenancy agreement. Pursuant to section 55 of the *Residential Tenancy Act*, the Landlord is granted an Order of Possession.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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 26, 2016

Residential Tenancy Branch