



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MYATOVIC INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

On February 7, 2017, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice").

The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issue to be Decided

- Should the 10 Day Notices to End Tenancy for Unpaid Rent be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began on March 1, 2016, as a month to month tenancy. Rent in the amount of \$725.00 per month is to be paid to the Landlord on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$362.50.

The Landlord testified that the Tenant has a history of not paying the rent when it is due under the tenancy agreement. The Landlord testified that the Tenant keeps promising to pay the rent on a specific date and fails to pay. The Landlord testified that the Tenant keeps changing the date that she promises to pay the rent.

The Landlord testified that the Tenant is three months in arrears for paying rent.

The Landlord testified that the Tenant was served with the following notices to end tenancy for unpaid rent:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the amount of \$1450.00 dated January 31, 2017.
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the amount of \$2175.00 dated February 2, 2017.

The Notices 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.

The Tenant testified that she received both of the 10 Day Notices that were placed under her door. The Tenant disputed the Notices on February 7, 2017.

The Landlord testified that he did not receive the amount of rent listed within the 10 Day Notice, within 5 days of serving the Tenant with the 10 Day Notices. The Landlord testified that he has not received any rent from the Tenant since issuing either of the 10 Day notices to end tenancy. The Landlord testified there was no agreement between the parties allowing the Tenant to pay the rent on a date other than when it's due under the tenancy agreement.

In response, the Tenant testified that she paid her rent for December 2016, but acknowledged that she has not paid the rent for the months of January 2017, February 2017, and March 2017.

The Tenant testified that due to a family emergency, she travelled to Alberta in December 2016. She testified that on December 21, 2016, she had reached an agreement with the Landlord, that she would pay the rent owing for January 2017, and February 2017, on February 28, 2017. The Tenant testified that she did not pay the rent owing on February 28, 2017, because she wanted to wait for this hearing.

The Tenant testified that the agreement that permitting her to pay the rent on February 28, 2016, was not made in writing, and she has no proof of the agreement.

Analysis

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.

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

I find that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not have the authority to withhold payment of the rent. The

Tenant did not provide sufficient evidence of a written agreement between the parties to allow her to pay the rent other than when it is due under the tenancy agreement. The Tenant testified that she did not pay the rent for the months of January 2017; February 2017; and March 2017.

I dismiss the Tenant's Application to cancel the 10 Day Notices To End Tenancy For Unpaid Rent dated January 31, 2017, and February 2, 2017.

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 10 Day Notices issued by the Landlord meet the requirements for form and content.

I find that the Landlord is entitled to an order of possession effective two (2) 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 the rent owing under the tenancy agreement and did not have the authority to withhold payment.

The Landlord is granted an order of possession effective two (2) 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: March 09, 2017

Residential Tenancy Branch