



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR,

Introduction

This is an application, brought by the tenant, requesting an order canceling a Notice to End Tenancy that was given for nonpayment of rent.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent.

Background and Evidence

This tenancy agreement has a start of tenancy date of December 1, 2016, with a monthly rent of \$850.00, due on the first of each month.

The landlord stated that the tenant failed to pay \$375.00 of the December 2016 rent, and therefore, on February 17, 2017, a 10 day Notice to End Tenancy was posted on the tenant's door.

The tenant testified that he withheld \$375.00 of the December 2016 rent because the landlord was not supplying sufficient heat to the rental unit, such that he did not even move into the rental unit until well into the month.

The tenant further testified that he did not apply for an order to withhold rent, nor did he apply for a rent reduction, prior to withholding the December 2016 rent.

The tenant further testified that he did not apply for an order for repairs to the heating system prior to withholding the rent.

The tenant further testified that he was not aware of his obligations under the Residential Tenancy Act, and believed he could withhold the rent since the landlord was not supplying sufficient heat.

Analysis

Section 26 of the Residential Tenancy Act states:

26 (1) 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. (My emphasis)

In this case, the tenant did not have any right under the act to deduct all or a portion of his rent, as the tenant had not applied for any rent reduction or any monetary claim prior to deducting money from the rent, nor had the tenant paid for any emergency repairs for which the landlord had failed to reimburse him.

Further section 46 of the Residential Tenancy Act states:

46 (1) 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.

Therefore, in this case, since the tenant deducted rent that was due in December 2016, the ten-day Notice to End Tenancy served by the landlord in February of 2017 is a valid notice, and it is my decision the tenant does not have reasonable grounds for me to cancel this notice.

The tenant stated that he did not know that he didn't have the right to deduct money from the rent, as he did not know his responsibilities under the Residential Tenancy Act,

however, not knowing your responsibilities does not exempt you from the provisions of the Residential Tenancy Act.

This application to cancel the Notice to End Tenancy will therefore be dismissed.

Section 55 of the Residential Tenancy Act states:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case I have examined the Notice to End Tenancy and it is my finding that it does comply with section 52 of the Act.

Conclusion

I therefore dismiss this application without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, pursuant to Section 55 of the Act, enforceable 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 21, 2017

Residential Tenancy Branch