



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, CNL, CNR, FF

Introduction

In the first application, by file number, the tenant applies to cancel a two month Notice to End Tenancy for landlord use of property and for compensation for problems with the home over plumbing, sewage and a septic system. By amendment to her claim the tenant also seeks to cancel a ten day Notice to End Tenancy for non-payment of rent.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and an award for unpaid June 2017 rent. By amendment to her claim she also seeks further unpaid rent and for anticipated repair costs.

At the start of the hearing, having regard to hearing time available today and Rule 2.3 of the Rules of Procedure, which states that a parties claims must be related, I determined that only the most urgent issues would be dealt with today. Both parties have claims unrelated to the question of the validity of the Notices or the amount of rent that might be owed. The tenant claims damages for problems with the house. The landlord claims anticipated repair costs. I dismiss those claims, with leave to re-apply granted to both parties.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the ten day Notice to End Tenancy a valid Notice? Is the two month Notice a valid Notice, given in good faith? What, if anything, is the landlord owed for rent?

Background and Evidence

The rental unit is a five bedroom house. The tenancy started August 1, 2016. The current monthly rent is \$2000.00, due on the first of each month. The landlord holds a \$1000.00 security deposit.

The landlord testifies about the tenant's pet, however it did not appear to be relevant to any of the issues before me.

She says that when she bought the house she thought its plumbing was connected to the municipal sewer. It wasn't. It was serviced by a septic field. She undertook the work to have it connected to the municipal system and gave the tenant a rent break, reducing the rent by \$150.00 until the home was connected to the municipal system.

The landlord says the connection was made in April of this year and so the tenant's rent returned to \$2000.00. However, she says, the tenant only paid \$1700.00 and received a receipt for that amount from the landlord's husband. Thus, she claims \$300.00 for the balance of May rent.

On May 29 the landlord issued the two month Notice to End Tenancy. She testifies that she and her family intend to move into the home from their present rental accommodation.

She says the tenant failed to pay June rent. She says the tenant attended at her residence on June 1 with the police to serve the tenant's application. The landlord was not there. Her husband was home and dealt with the matter. It would appear that prior to this date the police had intervened between the parties and advised each not to have contact with the other.

The landlord issued and served the ten day Notice the next day, claiming in it that the tenant had failed to pay the \$2000.00 June rent.

The parties agree that no rent money has changed hands for July.

The tenant tells a very different story in her testimony. She says she would have paid the full \$2000.00 May rent if the landlord had simply notified her it went back up, but she didn't get that notification.

She says she did pay the June rent of \$2000.00. She went to the landlord's house on June 1. The landlord was not home. The landlord's husband told her to put her material in the mail box at the door to the home. The tenant testifies that she put an envelope containing \$2000.00 into that mailbox. She did not get a receipt. She says she has a video of her attendance there. Unfortunately, she has not filed that digital evidence for this hearing.

She says she remains prepared to pay the July rent but the landlord will not cooperate in arranging a time or method of payment.

The tenant says the landlord has the house up for sale and so really doesn't intend to move in. There was a realtor sign up in December and at one time she took a realtor for a tour of the home. She thinks the municipality made the landlord take the sign down.

In response the landlord denies having the house up for sale. She says she had a realtor go through the home in order to determine its value.

Analysis

The primary question is whether or not the ten day Notice is a valid Notice. It claims the tenant failed to pay the \$2000.00 June rent on June 1.

The determination of whether or not that rent was paid boils down to the question of the credibility of the parties. Neither side has presented corroborative evidence to tip the scale. In this case I can find no reason to prefer the landlord's testimony about payment of June rent over that of the tenant, or *vice versa*.

In such a situation, the deciding factor then becomes a question of which side has the burden of proof to show that rent was paid. In this case it is the tenant. The burden of proof of payment of a debt falls to the debtor; the tenant. I find she has not satisfied that burden. She has not shown on a balance of probabilities that the June rent was paid.

I point out that the *Residential Tenancy Act* (the "Act"), mandates that a landlord provide a receipt for payments of rent in cash. The Residential Tenancy Branch Information Officers stand ready to counsel a tenant about landlords who are reluctant to trade a receipt for cash rent.

I find the June rent was not paid. As a result, the ten day Notice is a valid Notice and has resulted in this tenancy coming to an end on June 13, 2017.

Section 55 of the *Act* requires that an order of possession be issued to the landlord in these circumstances. The landlord will have an order of possession.

I find that the municipal sewer hook up was completed in April and so, whether the landlord notified the tenant that she had to pay the old rent or not, the rent returned to the tenancy agreement amount of \$2000.00. The landlord is owed \$300.00 for May rent and I award that to her.

The July rent or occupation rent has not been paid. I need not make a finding about why it has not been paid. It is owed and I award the landlord an additional \$2000.00 accordingly.

In the foregoing circumstances it is not necessary to make a determination about the validity of the two month Notice to End Tenancy for landlord use of property.

Conclusion

The tenant's application to cancel the two month Notice and the ten day Notice are dismissed. This tenancy ended on June 13, 2017. The landlord will have an order of possession.

The landlord is awarded \$4300.00 plus recovery of the \$100.00 filing fee. She will have a monetary order against the tenant in the amount of \$4400.00. She is free to apply the security deposit to the reduction of that amount.

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 12, 2017

Residential Tenancy Branch