



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDC

Introduction

On June 12, 2017, the Tenant made an Application for Dispute Resolution to dispute an additional rent increase and requested more time to make an application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 1, 2017. The Tenant also seeks a monetary order for money owed or compensation for damage or loss.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during 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.

Preliminary and Procedural Matters

The parties participated in a previous dispute resolution hearing in November 2016. The Tenant failed to attend the hearing and the Landlord was granted an order of possession for the rental unit. The Landlord testified that the Tenant pleaded to stay as a Tenant. The Landlord stated that she already found a new Tenant who agreed to pay a higher amount of rent. The Landlord testified that she offered the Tenant an opportunity to remain if she would pay the higher amount of rent. The Landlord testified that the Tenant agreed to this new term of tenancy.

At the start of the hearing the Tenant requested an adjournment. She testified that she is on medication and did not wish to proceed with the hearing.

The Tenant was asked to provide details on why the medication prevented her from proceeding with the hearing; however she did not provide any details or reasons other than stating she was not thinking clearly.

The Tenant was informed that this hearing was very straight forward as it pertains to whether or not she paid rent when it was due under the tenancy agreement. The Tenant was informed that it would be prejudicial to the Landlord to reschedule a hearing when the Landlord alleges she has not received rent and has issued a notice to end tenancy. The Tenant's request for an adjournment was denied.

The Tenant stated that her cell phone was cutting out and that she did not have access to a land line. The Landlord lives on the rental property and she stated that she has observed the Tenant talking on her cell phone all day long without a problem.

The Tenant was informed that her tenancy was at risk and that the Landlord may receive an order of possession based on the Tenants testimony that she did not dispute the 10 Day Notice on time and that she did not pay the rent in full for June 2017.

After informing the Tenant of the risk to her tenancy, at 9:18 am the issues with the cell phone resolved and there were no further issues with communicating with the Tenant for the remainder of the hearing.

Issues to be Decided

- Did the Tenant dispute the 10 Day Notice on time?
- Should the 10 Day Notice dated June 1, 2017, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that they reached an agreement that rent in the amount of \$600.00 is to be paid on or before the 31st day of each month. The Landlord provided rent receipts for January 2017, to April 2017, showing the Tenant paid \$600.00 for rent each month. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 1, 2017, ("the Notice"). The Landlord testified that the Notice was served to the Tenant in person on May 31, 2017.

The Notice states that the Tenant has failed to pay rent in the amount of \$600.00 which was due on May 31, 2017. The Notice 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 Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Landlord testified that she has not received any rent for June 2017, July 2017, or August 2017, from the Tenant.

The Tenant disputed the Notice on June 12, 2017, outside the required 5 day timeframe. The Tenant was asked to provide reasons why she was late disputing the 10 Day Notice. The Tenant stated that she was trying to negotiate with the Landlord.

The Landlord testified that she does not agree that the Tenant should be permitted additional time to dispute the 10 Day Notice.

The Landlord seeks an order of possession.

In response, the Tenant initially testified that she paid half of the rent for June 2017. The Tenant later testified that she did not pay any rent for June 2017.

The Tenant submitted that the rent increase to \$600.00 amounts to an illegal rent increase. She testified that the Landlord did not issue her a Notice of Rent Increase. She acknowledged that she pleaded with the Landlord to keep her as a Tenant after the Landlord obtained an order of possession against her at the earlier hearing. She testified that they renegotiated the amount of rent and she agreed to pay the amount of \$600.00. She testified that she agreed to this amount because she did not understand her rights.

The Tenant testified that her clothes have been damaged because they are stretched out. She testified that she does not have any evidence that the Landlord stretched her clothes; however, she feels that the Landlord bears the responsibility to compensate her for the damage. The Tenant is seeking \$1,000.00 for the damage to her clothing.

Analysis

Section 46 of the Act states that if a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I find that the Tenant filed a late dispute of the 10 Day Notice and did not have an exceptional reason or circumstances for the delay. The Landlord does not agree to allow an extension of time to allow the dispute.

The Tenant testified that she did not pay the rent owing under the tenancy agreement for June 2017.

I dismiss the Tenant's Application for more time to make an application to cancel the 10 Day Notice dated February 10, 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 Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (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.

With respect to the dispute of a rent increase, I find that the Tenant agreed to pay a higher rent as a condition of be able to remain as a Tenant. The Landlord received an order of possession against the Tenant and had a new Tenant ready to move into the unit at a higher rent. In the circumstances, I find that the parties agreed to new terms of tenancy in order that the Tenant could stay. I do not find that the Landlord applied an illegal rent increase.

The Tenant's claim for compensation in the amount of \$1,000.00 against the Landlord is dismissed. The Tenant provided insufficient evidence that the Landlord is responsible for damaging her clothing. The Tenant provided insufficient evidence of a loss, or the value of the loss.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and failed to dispute the 10 Day Notice within the legislated time period. The Tenant's application for more time to dispute the 10 Day Notice is dismissed.

The Landlord is granted an order of possession effective 2 days after service on the Tenant.

The Tenants request to dispute a rent increase and for compensation for damaged clothing is dismissed.

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: August 15, 2017

Residential Tenancy Branch