



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and request for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the tenant entitled to a Monetary Order as requested?

Background and Evidence

On July 26, 2017 a decision was issued by an Arbitrator granting the tenant a monetary award of \$1,409.19 (file number referenced on cover page of this decision). The Arbitrator authorized the tenant to deduct the amount awarded from rent otherwise payable to the landlord.

The tenant withheld rent of \$609.00 that was due on August 1, 2017 in partial satisfaction of the monetary award. On August 7, 2017 the landlord issued the subject 10 Day Notice to End Tenancy for Unpaid Rent indicating the tenant failed to pay rent of \$609.00 on August 1, 2017.

The landlord filed an Application for Review Consideration with respect to the July 26, 2017 decision indicating he had received the decision on August 18, 2017. The landlord's Application for Review Consideration was dismissed on September 11, 2017.

During this hearing the landlord confirmed that he issued the 10 Day Notice before he had received the decision of July 26, 2017 and that he now considers the 10 Day Notice to be moot since the tenant withheld rent pursuant to the authority she was given by an Arbitrator.

During this hearing, the tenant also confirmed that she withheld rent for September 2017 and part of October 2017 to satisfy the monetary award and she no longer seeks a Monetary Order.

Analysis

Section 26 of the Act provides that a tenant is required to pay rent when due in accordance with their tenancy agreement, even if a landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. A legal right to withhold rent includes authorization to do so from the Director of the Residential Tenancy Branch, as delegated to an Arbitrator, as provided under section 65 of the Act.

In this case, the tenant was given authorization to withhold a sum of \$1,409.19 from rent otherwise payable to the landlord on July 26, 2017. Accordingly, the tenant was entitled to withhold rent that was due on August 1, 2017. I accept that the landlord issued the 10 Day Notice before realizing the tenant had authorization to withhold rent. I also accept that the landlord now considers the 10 Day Notice to be of no effect given the decision of July 26, 2017 and the unsuccessful request for a review hearing. For added certainty, I cancel the 10 Day Notice as requested by the tenant.

Having heard the tenant has realized the monetary award of July 26, 2017, I find her request for a Monetary Order is now moot and her request for a Monetary Order is dismissed.

Conclusion

The 10 Day Notice is cancelled and is of no force or effect.

The tenant's request for a Monetary Order is now moot and 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: November 08, 2017

Residential Tenancy Branch