



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord make emergency repairs for health or safety reasons.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and give closing submissions.

During the course of the hearing it was determined that the tenant had not served the landlord with any evidentiary material. *The Residential Tenancy Act* and the Rules of Procedure require each party to provide the other with all evidence that they wish to rely on, even if the other party already has a copy. The tenant has not done so, and therefore, I decline to consider any of the tenant's evidence. The landlord has not provided any evidentiary material to the Residential Tenancy Branch or to the tenant.

Only the testimony and submissions of the parties is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make emergency repairs to the rental unit for health or safety reasons?

Background and Evidence

The landlord testified that this month-to-month tenancy began probably about a year ago. A written tenancy agreement exists, but was not provided for this hearing. Rent in the amount of \$3,100.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The tenant had roommates and collected security deposits from them but did not pay any of those deposits to the landlord.

The landlord also testified that the tenant has been continually late paying rent and on December 10, 2017 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. The landlord testified that it is dated December 10, 2017 and contains an effective date of vacancy of December 20, 2017 for unpaid rent in the amount of \$2,560.00 that was due on December 1, 2017, and the landlord testified that covers rent owed for November and December, 2017.

The landlord further testified that the tenant has collected rent from roommates without paying the landlord. In November the tenant paid \$1,800.00, leaving \$1,300.00 outstanding. The landlord believes the tenant paid the landlord \$1,300.00 on December 29 and had also paid \$540.00 for part of December, on December 2, both by e-transfer.

With respect to the tenant's application for emergency repairs, the landlord testified that mold was checked by professionals and deemed not to be an emergency. However a repair was completed and the person staying in that room stayed for another month after repairs were done. A drain outside was blocked by garbage bags.

The tenant testified that the landlord is blatantly lying about rent. The tenant paid cash and they agreed that December was paid off. The tenant believes some is owed for January, but is not sure how much, but gave \$800.00 by e-transfer in January, 2018.

The tenant also denies that any professional person attended the rental unit. The landlord had her brother replace some drywall. The moisture is not coming in from outside, but the tenant believes it's a problem with a leak in the foundation.

The tenant also testified that on December 9, 2017, while the tenant was not home, the landlord took the tenant's laptop, TV, blue tooth speakers and blue tooth headphones, as told by the tenant's roommates. The tenant filed a police report, and the police said they've tried to contact the landlord for the last 3 weeks but she won't respond. The tenant called the landlord, however spoke to the landlord's sister who said the landlord wanted her money.

On January 2, 2018 the landlord also took a digital camera and another laptop belonging to a roommate because that roommate hadn't paid rent due to mold in the room. That roommate has already moved out.

The tenant withdraws the application for emergency repairs, however seeks an order permitting the tenant to change the locks to the rental unit until the tenant moves out.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. The *Act* also states that a tenant must pay rent when it is due whether or not the landlord has complied with the *Act* or the tenancy agreement respecting required repairs or other matters. Further, once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to pay the rent in full or dispute the notice, and if the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

I do not have the benefit of a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and therefore I cannot be satisfied that any given was in the approved form. Neither party has provided any evidence to substantiate their positions. The landlord testified to payments made by the tenant, however It is not clear to me how much is owed by the tenant. The tenant admits that not all rent has been paid for this month. The Rules of Procedure require a tenant to provide as evidence a copy of any notice to end the tenancy given by the landlord that the tenant disputes. The tenant has not done that, still owes rent to the landlord, and I dismiss the tenant's application.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. In the absence of any evidence from the landlord, I cannot be satisfied that any notice given to the tenant is in the approved form, and I decline to issue an Order of Possession.

At the conclusion of the hearing the tenant withdrew the application for an order that the landlord make emergency repairs for health or safety reasons, but seeks an order permitting the tenant to change the locks to the rental unit. There is no supporting evidence to justify changing locks. It is important that a landlord be able to enter a rental unit if an emergency exists. The tenant has not given the landlord any notice of such an application, and in the absence of any supporting evidence from the tenant that such an order should be made, I dismiss the application.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: January 29, 2018

Residential Tenancy Branch