



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, ERP, MNDC

Introduction

On November 3, 2017, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy; for repairs to the unit; for compensation; and for the Landlord to provide services and facilities required by law.

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 hearing process was explained. 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

An arbitrator has the discretion to dismiss unrelated claims with or without leave to reapply. Since the most important issue to determine is whether or not the tenancy has ended due to unpaid rent, I dismiss the Tenant's other claims with leave to reapply.

Issues to be Decided

- Is the tenancy ending due to unpaid rent?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties provided differing testimony on the date the tenancy began. The Tenant submitted that she moved into the unit on June 15, 2017. The Landlord testified that the Tenant moved in on July 1, 2017.

The parties provided different testimony regarding the terms of the tenancy agreement. The Tenant testified that she is renting a self-contained unit which is the back half of a house that she shares with her daughter. She testified that she has a separate tenancy agreement from her daughter. The Tenant testified that she is required to pay \$550.00 per month to the Landlord. She testified that her daughter also has a separate tenancy agreement and is also required to pay \$550.00 to the Landlord. The Tenant testified that she did not pay a security deposit or pet damage deposit.

The Landlord testified that the Tenant and her daughter are both on the same tenancy and rent in the amount of \$1,100.00 is due by the first day of each month. The Landlord confirmed that he never received a security deposit or pet deposit from the Tenants. The Landlord submitted that he did not prepare a written tenancy agreement.

The Landlord testified that he issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 30, 2017, when the Tenants failed to pay the rent owing under the tenancy agreement.

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 Tenant disputed the 10 Day Notice on November 3, 2017.

The Tenant testified that she paid her portion of the rent for July and August 2017. She testified that the Ministry sent the Landlord a cheque for the July and August rent and the Landlord cashed the cheques. The Tenant submitted that her daughter only paid a total of \$375.00 towards rent; however, since they have separate tenancies, her daughter's failure to pay should not apply to her.

The Tenant testified that she has not paid the rent for October 2017; November 2017; December 2017; and January 2018. She submitted that the Ministry put a stop payment on the rent payments when she reported an issue where the Landlord was

restricting a service or facility. She submitted that the Ministry would have resumed paying the rent if the Landlord would have contacted them.

The Tenant testified that she has been living in the rental unit for the past four months and the rent has not been paid.

The Landlord is seeking an immediate order of possession for the rental unit.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant has failed to pay the rent owing under the tenancy agreement. Regardless of whether the Tenant had her own tenancy agreement or whether she was a co-tenant, she testified that the rent was not paid for the past four months. I find that the Tenant did not have a legal right to withhold payment of rent.

While I acknowledge the Tenant's submissions that she attempted to correct the situation, I find that the Tenant has an obligation to pay the rent owing each month and it is not the Landlord's obligation to chase after the rent from the Ministry.

Section 62 of the Act provides the director the authority to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a Landlord or Tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I find that the Landlord is entitled to an order of possession due to a fundamental breach of the tenancy agreement by Tenant for failing to pay the rent when it was due.

I dismiss the Tenant's application to cancel the 10 Day Notice dated October 30, 2017.

I grant the Landlord 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.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement.

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

The Tenant has leave to reapply for her claims that were dismissed with leave to reapply.

The Landlord has leave to make an application for dispute resolution seeking compensation for unpaid rent.

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 18, 2018

Residential Tenancy Branch