



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE MERRITT REAL ESTATE SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MT, CNR, CNC,

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act").

On February 15, 2018, the Tenants applied for Dispute Resolution requesting more time to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and to cancel a 1 Month Notice To End Tenancy For Cause.

On February 19, 2018, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2018.

The matter was set for a conference call hearing. Both parties were present at the 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

1 Month Notice

The Tenant's application included a dispute of a 1 Month Notice To End Tenancy For Cause dated January 26, 2018.

The Landlord was questioned about the issuance of the 1 Month Notice To End Tenancy For Cause, and he was not aware of the 1 Month Notice and did not have any information surrounding the issuance of the Notice.

Since the Landlord was not prepared to defend the issuance of the Notice, I have cancelled the 1 Month Notice To End Tenancy For Cause dated January 26, 2018.

The hearing proceeded based on the Landlord's request for an order of possession and a monetary order for unpaid rent; and the Tenants request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Issues to be Decided

- Is the tenancy ending due to non-payment of rent and is the Landlord entitled to an order of possession?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on June 1, 2017, on a month to month basis. Rent in the amount of \$900.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Landlord provided a copy of the tenancy agreement.

10 Day Notices

The Landlord testified that the Tenants were served with multiple 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the 10 Day Notices") The Landlord testified the following 10 Day Notices were served to the Tenant:

- 10 Day Notice dated July 7, 2017, for \$900.00 rent owing on July 1, 2017
- 10 Day Notice dated July 24, 2017, for \$450.00 rent owing on July 1, 2017
- 10 Day Notice dated January 26, 2017, for \$450.00 deposit owing on June 1, 2017
- 10 Day Notice dated February 6, 2018, for \$900.00 rent owing on February 1, 2018
- 10 Day Notice dated March 6, 2018, for \$1,800.00 rent owing on March 1, 2018
- 10 Day Notice dated April 4, 2018, for \$2,700.00 rent owing on February 1, 2018

The 10 Day Notices informed the Tenant that the Notices 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 has not paid the rent owing under the tenancy agreement within 5 days of receiving of the 10 Day Notice dated February 6 2018. The Landlord testified that the Tenant owes \$2,700.00 rent for February 2018, March 2018, and April 2018. The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$2,700.00.

In reply, the Tenant testified that she received all of the 10 Day Notices that the Landlord issued as noted above.

The Tenant testified that she has not paid the rent owing under the tenancy agreement for the months of February 2018, March 2018, and April 2018, and she acknowledged that she owes the Landlord \$2,700.00.

The Tenant testified that she requested more time to dispute the February 6, 2018 Notice to end tenancy because she has a court order saying she cannot move from her residence and she needed to speak to her lawyer.

The Tenant also testified that she currently has no income and is unable to pay the rent.

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 and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

The Tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2018, and failed to pay the rent owing under the tenancy agreement within 5 days of receiving the Notice.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. The Tenant fundamentally breached the tenancy agreement by failing to pay the rent.

I dismiss the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2018.

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 two (2) 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.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution

I grant the Landlord a monetary order in the amount of \$2,800.00 for three months of unpaid rent and the \$100.00 filing fee.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement for within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2018.

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

I grant the Landlord a monetary order in the amount of \$2,800.00 for three months of unpaid rent and the \$100.00 filing fee.

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: April 30, 2018

Residential Tenancy Branch