



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, DRI, PSF, AAT, LRE, LA

Introduction

On May 5, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the following relief:

- to cancel a 1 Month Notice To End Tenancy For Cause dated April 28, 2018.
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2018.
- to dispute a rent increase above the amount permitted by law.
- for the Landlord to provide services and facilities required by the tenancy agreement, or law.
- to suspend or set conditions on the Landlords right to enter the rental unit
- for authorization to change the locks.
- For the Landlord to allow access to the unit for the Tenant and guests.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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 Issues

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to the notices to end tenancy. The Tenants other claims are dismissed with leave to reapply.

Issues to be Decided

- Is the tenancy ending due to non-payment of rent?

- Is there cause to end the tenancy based on the 1 Month Notice To End Tenancy For Cause dated April 28, 2018?

Background and Evidence

The parties testified that the rental unit is a lower 2 bedroom suite in a residential house. The Landlord and Tenant testified that the tenancy originally began sometime in 2013. In 2013, the Tenant lived in the unit with her husband and two children. In November 2017, the Tenant and her husband separated and he moved out. The Tenant wished to remain in the rental unit with her two children.

The Tenant submitted that she applied for income assistance. She submitted that the Landlord was reluctant to continue the tenancy; however, the parties agreed upon new terms of the tenancy. The Tenant testified that she agreed to pay \$850.00 per month for rent beginning on November 2017. She testified that she later began to pay \$800.00 per month. The Tenant testified that the previous term of the tenancy permitted the Tenants to pay the rent anytime within the first 10 days of the month.

The Landlord testified that the rent of \$850.00 was due by the first day of each month. The Landlord testified that the rent includes utilities, wifi, and cable.

The Landlord did not prepare a written tenancy agreement.

The rental unit was sold on April 9, 2018, and the new owners take possession of the rental property on July 3, 2018. The purchaser asked the Landlord to end all tenancies as the purchaser intends to occupy the rental property and wants vacant possession of the property. The Landlord provided a copy of May 17, 2018, letter indicating the new owner wants vacant possession of the rental property.

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the 10 Day Notice") dated May 2, 2018. The 10 Day Notice indicates the Tenant has failed to pay the rent of \$850.00 that was due on May 1, 2018.

The 10 Day 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 within the required timeframe.

The Landlords testified that they have not received the rent owing under the tenancy agreement for the month of May 2018, or June 2018. The Landlord testified that the Tenant attempted to pay June 2018, rent on June 14, 2018, but she changed her mind when the Landlord told her the rent would only be accepted for use and occupancy only.

In response the Tenant testified that she did pay the May 2018, rent to the Landlord. She testified that she paid the Landlord \$800.00 on May 2, 2018; the same day that the Landlord issued the 10 Day Notice. The Tenant testified that she attempted to pay the rent on June 14, 2018, but the Landlord would not take it. She testified that she waited until June 14 to attempt to pay the rent because she was concerned that the Landlord would take it and deny that he received payment. The Tenant testified that the Landlord does not provide her with rent receipts. The Tenant referred to her documentary evidence of bank

records which she submits shows that she withdrew money each month for rent. The Tenants bank records show that she withdrew \$800.00 on April 4, 2018, and \$3,000.00 on May 2, 2018.

The Tenant testified that in accordance with their new agreement, she paid the Landlord rent in the amount of \$850.00 for the months of November 2017, and December 2017. She testified that the Landlord did not provide her with laundry so she unilaterally decided to only pay \$800.00 per month from that point forward.

The Landlords testified that the one time they received a cash rent payment they issued a receipt. The Landlord s referred to their documentary evidence of a receipt dated April 8, 2018, for the amount of \$800.00.

The Tenant testified that she is actively looking for a place to move to, and needs more time to find a rental unit.

The Landlord testified that they did not issue a 2 Month Notice To End Tenancy For Landlord's Use Of Property to the Tenant because they had already issued the Tenant a 10 Day Notice for unpaid rent, and 1 Month Notice to end the tenancy prior to receiving the letter from the purchaser dated May 17, 2018.

The Landlord testified that the Tenants were served with a 1 Month Notice To End Tenancy ("the 1 Month Notice") dated April 28, 2018. The reasons for ending the tenancy within the 1 Month Notice are:

Tenant is repeatedly late paying rent

Tenant has allowed an unreasonable number of occupants in the unit /site

Tenant or a person permitted on the property by the Tenant has:

- *Put the Landlord's property at significant risk*

Tenant has assigned or sublet the rental unit/ site without the Landlord's written consent.

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 1 Month Notice within the required timeframe.

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 Tenant, and on a balance of probabilities, I make the following findings:

The Landlord and Tenant entered into a new tenancy agreement that began on November 1, 2017. The parties agreed the rent would be \$850.00 per month. The Tenant by her own admission decided to pay less rent in January 2018 and onwards. The Tenant must pay all the rent due under the tenancy agreement. If the Tenant had an issue regarding the service of laundry the Tenant should have continued paying the rent and could have applied for dispute resolution. I find that the Tenant did not have the legal right to reduce the amount of monthly rent.

With respect May 2018, rent, the Tenant does not have a receipt to prove she paid the rent to the Landlord. The Tenant's bank record showing that she withdrew \$3,000.00 is not proof that she paid the rent to the Landlord. The Tenant demanded a receipt for the April 2018, rent payment and the Landlord provided a receipt dated April 8, 2018. I do not accept the Tenant's submission that the Landlord does not issue rent receipts.

I find that the Tenant has been paying less rent than what was agreed to. I find that there is insufficient evidence from the Tenant to prove that she paid the rent for May 2018. I find that the Tenant has also failed to pay the rent for June 2018.

I dismiss the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 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 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.

Since the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent, there is no need to consider the testimony regarding the 1 Month Notice To End Tenancy For Cause dated April 28, 2018.

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

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: June 29, 2018

Residential Tenancy Branch