



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was set for 1:30 p.m. on today's date to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

I note that the hearing was originally scheduled to be heard at 11:00 a.m. on October 26, 2018. On October 12, 2018 the Residential Tenancy Branch received a written request to reschedule the hearing. Both parties consented to a rescheduling and provided an email address to use to send the new Notice of Dispute Resolution Proceeding. A Notice of Dispute Resolution Proceeding that provides for the rescheduled date and time, along with a new passcode, for today's hearing was sent to both parties via email on October 16, 2018.

The tenant appeared at the hearing; however, there was no appearance on part of the landlord despite waiting at least 20 minutes to allow the landlord the opportunity to appear.

Since the landlord was not in attendance, I explored service of hearing documents upon the landlord. The tenant testified that she personally served the landlord with the hearing documents.

The tenant stated that the landlord served her documents on the day of this hearing. I noted that it appeared that the landlord had also uploaded documents to the Residential Tenancy Branch service portal on October 19, 2018 although it appears the landlord used the tenant's dispute access code to do so. The tenant questioned the admissibility of the landlord's evidence considering it was served upon her today. I excluded the landlord's evidence from further consideration since the landlord failed to appear at the hearing to present the evidence, pursuant to Rule 7.4 of the Rules of Procedure, or demonstrate that it was served to the tenant within the time limit for doing so.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

Background and Evidence

The tenant testified that when her tenancy started the rent was set at \$900.00. Quite some time ago the former landlord verbally authorized the tenant to deduct \$100.00 from the monthly rent due to outstanding repair issues. The tenant presented rent receipts that go back to March 2017 to demonstrate she has been paying \$800.00 per month.

Starting the month of July 2018 the current landlord required the tenant to pay the full amount of rent, or \$900.00. The tenant stated that there continues to be outstanding repair issues, namely mould, that the landlord has not rectified and the tenant is of the position she still has the right to deduct \$100.00 from rent based on their agreement that she do so until the repair issues are rectified. The tenant testified that when the landlord demanded the rent return to \$900.00 per month the landlord told her that she could open the windows and doors to ventilate the mould smell because it was summer time. The tenant testified that the landlord was also going to install a fan in the rental unit August 2018 but has not yet done so.

The tenant continued to pay \$800.00 in rent for the months of July 2018, August 2018 and September 2018. On September 5, 2018 the landlord issued a 10 Day Notice to End tenancy for Unpaid Rent indicating \$300.00 in outstanding rent and posted it to the tenant's door.

The tenant orally requested repair orders during the hearing; however, I declined to consider that request since the landlord was not put on notice that the tenant would be seeking repair orders by way of this proceeding. The tenant was informed that she remains at liberty to file another Application for Dispute Resolution if she wishes to obtain repair orders. The tenant may also seek an Arbitrator's authorization to make deductions from rent payable by way of an Application for Dispute Resolution.

Analysis

Where a landlord issues a notice to end tenancy to a tenant, the tenant has the right to dispute the notice. Where a notice to end tenancy comes under dispute, the landlord

bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

In the absence of the landlord at the hearing, and in the absence of any admissible documentary evidence, I find the landlord has not established that the tenancy should end pursuant to the 10 Day Notice dated September 5, 2018. Therefore, I cancel the 10 Day Notice issued on September 5, 2018 and the tenancy continues at this time.

I strongly encourage the parties to reflect their agreement with respect to any authorized deductions from rent in writing. If the parties remain in dispute as to whether the tenant may make deductions from rent, the parties may seek resolution by way of an Application for Dispute Resolution.

Conclusion

The 10 Day Notice dated September 5, 2018 is cancelled and the tenancy continues at this time.

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: October 30, 2018

Residential Tenancy Branch