



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, CNR, LA, LRE

Introduction

On July 26, 2018, the Tenant applied to cancel a 1 Month Notice To End Tenancy For Cause. On September 7, 2018, the Tenant amended the application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 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. The parties confirmed that they exchanged the documentary evidence before me.

Background and Evidence

The parties testified that the tenancy began on May 1, 2018, as a one year fixed term tenancy. Rent in the amount of \$1,125.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$562.50.

The Landlord testified that testified that the Tenant has failed to pay the rent due under the tenancy agreement for the months of July, August and September 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2018.

The Notice indicates the Tenant has failed to pay rent in the amount of \$3,413.75 which was due on Sept 1, 2018. 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 Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Tenant disputed the Notice on September 7, 2018, within the required time period.

In response, to the Landlords testimony, the Tenant testified that she is going through a separation and recently had a close friend pass away. She testified that she is having difficulty paying the rent and acknowledged that she has not paid the rent for the months of July, August, and September 2018.

The Landlord seeks an order of possession for the rental unit.

The Landlord also issued the Tenant a 1 Month Notice To End Tenancy For Cause dated June 29, 2018.

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, and the testimony of the parties, I find that the Tenant has fundamentally breached the tenancy agreement by failing to pay the rent due under the tenancy agreement. I find that the Tenant did not have a legal right to withhold payment of the rent.

The Tenant failed to pay the rent owing within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2018.

I dismiss the Tenant's application to cancel the 10 Day Notice dated September 7, 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 non-payment of rent, there is no need to consider the merits of the 1 Month Notice To End Tenancy For Cause dated June 29, 2018.

Conclusion

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

The tenancy is ending.

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: September 18, 2018

Residential Tenancy Branch