



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LA, OLC, LRE, MNDC, DRI, FFT

Introduction

On May 13, 2019, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 8, 2019. The Tenants also applied for the following relief:

- To dispute an illegal rent increase
- For an order that the Landlord to make emergency repairs to the rental unit.
- To authorize the Tenants to change locks to the unit.
- To suspend or set conditions on the Landlords right to enter the unit.
- For a money owed or compensation for damage or loss

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 evidence was reviewed and confirmed received by each party. 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

The Tenant testified that she is moving out of the rental unit on July 1, 2019, and she only wanted to pursue her application to dispute 10 Day Notice to End Tenancy for

Unpaid Rent and for money owed or compensation for damage or loss. The remainder of the Tenant's claims were withdrawn and are dismissed.

The Tenant failed to serve her documentary evidence to the Landlord in accordance with the Residential Tenancy Branch Rules of Procedure. The Landlord testified that she received the Tenant's evidence the day before the hearing. The Landlord asked that the Tenants evidence not be accepted.

Since the Landlord has not had a reasonable amount of time to consider and respond to the Tenant's evidence, the Tenant's evidence was excluded from the hearing.

No documentary evidence was received from the Landlord.

Issues to be Decided

- Was the rent due under the tenancy agreement paid within 5 days of the receiving the 10 Day Notice?
- Did the Tenants have a legal right to withhold payment of the rent?
- Is the tenancy ending and is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The parties testified that the tenancy began on May 1, 2016. Rent in the amount of \$1,050.00 is due to be paid to the Landlord by the first day of the month. The Landlord received a security deposit in the amount of \$525.00.

The Landlord and Tenant, Ms. N.J. testified that Ms. N.J moved into the unit in August 2018. The Landlord approached the Tenant and agreed that Ms. N.J. could live in the unit with her mother if the parties could agree on an additional amount of rent. The parties agreed that additional rent would be paid. The Tenant testified that the Tenants paid an additional \$250.00 each month. The Landlord testified that the Tenants paid an additional \$200.00 each month.

The Landlord testified that the Tenants failed to pay the rent when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 8, 2019, ("the 10 Day Notice"). The Landlord testified that the 10 Day Notice was served by posting the Notice to the Tenant's door.

A Notice that is posted to a door is deemed delivered after three days. Based on the evidence, the effective date of the Notice is May 21, 2019, ten days after the Notice was received.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,050.00 which was due on May 1, 2019. 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 Notice contains an effective date of May 21, 2019; however the date was written in an incorrect place on 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 could not recall when the Notice was received on the door. The Tenants disputed the 10 Day Notice on May 13, 2019, within the required time frame.

The Tenant testified that the Tenants did not pay the rent due under the tenancy agreement because the Landlord promised the Tenants they could have 1.5 months of free rent. The Tenant testified that rental suite is illegal and there is mould present. The Tenant testified that the parties reached an agreement in April 2019, that the Tenants could have free rent and would move out of the rental unit as soon as possible. The Tenant testified that the agreement was not in writing.

The Landlord testified that the Tenants approached her and stated that they had health issues and wanted to recover what they felt was an overpayment of rent. She testified that they threatened to call the police. She testified that they proposed 1.5 months of free rent. The Landlord testified that she agreed to reduce rent for April 2019, by \$1,000.00. The Landlord testified that the Tenants only paid \$50.00 for April 2019 rent.

The Landlord testified that there was no agreement reached that the Tenants could have 1.5 months of free rent.

The Landlord is seeking an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant is seeking the amount of \$1,050.00 which is equal to the amount of rent due for May 2019. The Tenant submitted that the Landlord promised a free month of 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 before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that the original tenancy agreement was with the Landlord and Ms. A.J. who did not attend the hearing. The Landlord has the right to decide whether or not to add additional occupants to a tenancy agreement. I find that the parties agreed that Ms. N.J. could be added to the tenancy in exchange for additional rent each month.

Neither party provided documentary evidence to support whether the additional monthly rent was \$200.00 or \$250.00 each month. I make no determination on the amount of rent that was to be paid because I find that any extra rent paid was not an over payment of rent situation. In August 2018, the Tenants agreed to pay additional rent in exchange for Ms. N.J. being permitted to live at the rental unit. The Tenants cannot now claim that the additional rent paid is an overpayment.

I find that there is insufficient evidence from the Tenants to establish that there was an agreement reached that the Landlord would give 1.5 months of free rent. The burden of proof rests with the Tenant. The Landlord denied there was an agreement and the Tenant could not provide sufficient proof of an agreement. I find that there was likely a proposal but no agreement.

Since I have found that the additional rent paid was not an overpayment of rent and since there is insufficient evidence that the Tenants did not have to pay May 2019, rent, I find that the Tenants failed to pay the rent due for March 2019, within five days of receiving the 10 Day Notice.

I find that the Tenants did not have a legal right under the Act to withhold payment of the May 2019 rent. I find that the Tenants have breached the Act and fundamentally breached the tenancy agreement.

I dismiss the Tenant's application to cancel the 10 Day Notice dated May 8, 2019.

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 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 Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenants' claim for compensation in the amount of \$1,050.00 is dismissed. There is insufficient evidence that the Tenants are entitled the amount of one month's rent.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

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

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 27, 2019

Residential Tenancy Branch