



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on May 21, 2019, wherein the Tenant requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on May 16, 2019 (the "Notice")

The hearing was conducted by teleconference at 1:30 p.m. on July 9, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party provided a copy of the Notice in evidence. During the hearing I directed the Landlord to submit a copy to the Residential Tenancy Branch. I confirm that the Landlord complied with my request and I therefore reviewed the Notice in making this my Decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord stated that the Tenant's mother lived in the rental unit since 2012. Monthly rent is \$1,400.00. The Landlord confirmed that he did not have a tenancy agreement with the Tenant; rather, he had a tenancy agreement with the Tenant's late mother and her father. At some point after the Tenant's mother became ill, the Tenant moved into the rental unit. Both of the Tenant's parents passed away following which the Tenant remained in the rental unit and paid rent to the Landlord.

The Tenant did not pay the rent for May 2019; as a consequence the Landlord issued the Notice on May 16, 2019 indicating that the sum of \$1,400.00 was outstanding for May 1, 2019. The effective date of the Notice was May 27, 2019.

In terms of service, the Landlord stated that his daughter posted the Notice on the rental unit door on May 16, 2019.

The Tenant applied for Dispute Resolution on May 21, 2019.

The Landlord further confirmed that there has been no rent paid since such that the sum of \$4,200.00 is outstanding for May, June and July 2019.

The Tenant testified as follows. She confirmed that the May, June and July rent is outstanding. She further stated that she has not paid rent as she believed that the Landlord has not taken care of his responsibilities for pest and mould removal.

At the same time the Landlord provided a copy of the Notice to the Residential Tenancy Branch he also provided a Monetary Orders Worksheet confirming the amounts owing for rent. As noted during the hearing, the Application before me was the Tenant's Application to cancel the Notice. The Landlord has not brought forward an Application for monetary compensation and is not able to do so through the Tenant's Application.

Analysis

After consideration of the testimony and evidence of the parties and on a balance of probabilities I find as follows.

I find that the parties entered into an oral tenancy agreement following the passing of the Tenant's parents. The monthly rent pursuant to that agreement was \$1,400.00.

The undisputed evidence is that the Tenant failed to pay rent for May, June and July 2019.

I find that the Notice was posted to the rental unit door on May 16, 2019.

The Tenant stated that she did not pay rent as she believed the Landlord was not honouring his obligation to take care of pest control and mould at the rental unit. Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent.

As discussed during the hearing, the Tenant may not withhold rent as a means to encourage the Landlord to make repairs. The appropriate course of action for the Tenant is to make a formal request in writing for the Landlord to make these repairs. If the Landlord did not comply, the Tenant was at liberty to apply to the Residential Tenancy Branch for Orders pursuant to sections 32, 33 and 62(3) that the Landlord make those repairs. In this situation the Tenant had no authority under the *Act* to not pay rent.

I therefore dismiss the Tenant's request for an order canceling the Notice.

Section 55 of the *Residential Tenancy Act* provides in part as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. Consequently, and as I have dismissed the Tenant's claim, the Landlord is entitled to an Order of Possession effective two days after service. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant's Application is dismissed.

The Landlord is entitled to an Order of Possession.

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: July 10, 2019

Residential Tenancy Branch