



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP

Introduction

On July 9, 2019, the Tenant 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, and for an order that the Landlord make repairs to the rental unit.

The matter was set for a conference call hearing. The Tenant, the property owner, and the owner's agent attended the teleconference 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.

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 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 matter to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent. The Tenant's request for an order for the Landlord to make repairs to the rental unit is dismissed with leave to reapply.

At the start of the hearing the Tenant requested an adjournment so that she could get an advocate to assist her. The Tenant testified that she has not had sufficient time to arrange for an advocate. The Tenant acknowledged that she received a 10 Day Notice from the Landlord on July 4, 2019, and disputed the Notice on July 9, 2019; however, she testified that her advocate was awaiting approval to assist her and could not attend.

In response to the Tenant's request for an adjournment the Landlord provided testimony that the Tenant has not paid the rent for many months and she was issued the 10 Day Notice back in July 2019. The Landlord testified that they have already suffered a loss of rent for July 2019; August 2019; and September 2019.

In addition, the Landlord submitted that the Tenant did not follow through with the dispute of the 10 Day Notice because she never actually served the Notice of Dispute Resolution Proceeding documents to the Landlord to inform the Landlord that the 10 Day Notice was disputed.

The Landlord became aware of the hearing when he proceeded to apply for dispute resolution via Direct Request for an order of possession and monetary order and was informed by the Residential Tenancy Branch that there is a hearing on this date.

The Tenant testified that she did not serve the dispute notice to the Landlord because she did not know who to serve.

I note that the 10 Day Notice that the Tenant disputed contains the service address of the Landlord.

I find that the Tenant has had a reasonable amount of time to arrange to have an advocate assist her. I find that a further delay would be prejudicial to the Landlord who has already suffered a loss of rent for multiple months.

I also find that the Tenant's explanation as to why the Notice of Dispute Resolution Proceeding documents were not served is not reasonable. The information was contained on the Notice that she disputed.

The Tenant's request for an adjournment is denied.

Issues to be Decided

- Should the 10 Day Notice dated July 4, 2019, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began on March 15, 2019, on a month to month basis. Rent in the amount of \$1,800.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$900.00.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement. The Landlord testified that the Tenant failed to pay the full amount of rent due for the month of May 2019. The owner testified that he gave the Tenant more time to pay the rent but when the rent was not paid by July 4, 2019, the Landlord had his agent issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2019, ("the 10 Day Notice"). The 10 Day Notice indicates that the Tenant owes \$900.00 for unpaid rent.

The Landlord testified that the Tenant was served with the 10 Day Notice by posting the notice to the Tenant's door. 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 \$900.00 amount outstanding within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenant has not paid any amount of rent since the 10 Day Notice was issued. The Landlord testified that in addition to the \$900.00 the Tenant has not paid the rent owing under the tenancy agreement for the months of August 2019, and September 2019.

The Tenant disputed the 10 Day Notice on July 9, 2019, within the required time period.

In response, the Tenant testified that she withdrew money from her bank on May 21, 2019 and paid the owner an amount of \$950.00 in cash. The Tenant testified that she did not get a receipt from the Landlord. The Tenant testified that she had a friend witness the payment. The Tenant was asked if her witness was attending the hearing and available to testify and she replied “no”.

When the Tenant was asked questions about her bank transaction she then testified that she actually received a payday loan from a company on May 21, 2019. When the Tenant was asked if she had provided any documentation to confirm the payday loan transaction she replied “no”.

In reply, the owner testified that he did not receive a cash payment from the Tenant on May 21, 2019. The owner testified that he has text messages from the Tenant after May 21, 2019, that date showing that the rent had not been paid. The owner testified that the Tenant was invited to provide her proof of bank statements to them prior to the hearing; however she did not do so.

The Tenant provided testimony confirming that she has not paid the rent owing under the tenancy agreement for the months of August 2019, and September 2019. The Tenant testified that she withheld the rent because she wants the Landlord to complete repairs of the unit.

The Landlord’s agent testified that another 10 Day Notice was issued to the Tenant at the beginning of September 2019.

Analysis

Section 26 of the Act provides 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.

After carefully considering all the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant failed to pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice on July 4, 2019.

The Tenant disputed the 10 Day Notice and attended the hearing but provided no documentary evidence to support her statement that she paid \$950.00 to the Landlord on May 21, 2019. With respect to her testimony, it was inconsistent. She initially said that she withdrew it from the bank and did not have any bank records; but then she changed her testimony saying that she received a payday loan from S.C. and did not have any transaction records. Based on the testimony before me, I prefer the evidence of the owner and agent which was straight forward and credible.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement. The tenancy is ending.

I find that there is insufficient evidence from the Tenant to establish that the rent of \$900.00 was paid to the Landlord. I dismiss the Tenant's application to cancel the 10 Day Notice dated July 4, 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 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.

The Landlord requested a monetary order for the unpaid rent. Since I do not have an application from the Landlord before me, the Landlord will need to make application for Dispute Resolution and serve the Tenant with the claim in order to proceed with a monetary claim. It appears that the Landlord's application for an ex parte hearing by direct request was never processed.

Conclusion

The Tenant 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 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 10, 2019

Residential Tenancy Branch