



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended the hearing and gave affirmed testimony. The landlord also attended, gave affirmed testimony and was accompanied by Legal Counsel. The parties, or counsel, were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2019 was issued in accordance with the *Residential Tenancy Act*.

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2011, however the house burned down and the tenant started to live in another building on the property, which is a duplex, and the tenant still resides there.

Rent is currently \$1,600.00 per month payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the

amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was paid.

The tenant failed to pay rent when it was due, paying only \$400.00 per month, or less for the months of May through September, 2019. Rent is paid by cheque, and the landlord has not cashed any of those cheques, and no receipts were issued to the tenant.

On July 6, 2019 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated July 4, 2019 and contains an effective date of vacancy of July 20, 2019 for unpaid rent in the amount of \$3,600.00 that was due on July 1, 2019. Copies of the landlord's Deposit Slips have been provided as evidence for this hearing, as well as copies of cheques.

The parties had been to a hearing before the Residential Tenancy Branch, and the landlord testified that the tenant had testified at that hearing that rent was \$1,600.00 per month. A copy of the resulting Decision has not been provided for this hearing.

The landlord has also provided a copy of a letter from the landlord addressed to the tenant dated July 1, 2019 indicating that rent has been in arrears the sum of \$1,200.00 for July, 2019 and the previous 2 months, and that the tenant's idea that the landlord had a separate agreement with a sub-tenant is incorrect.

The tenant testified that she has been renting the entire building since 2013 for \$1,600.00 per month, less repairs made, and sublets the other side of the duplex. A copy of the tenancy agreement made between the tenant and the sub-tenant has been provided as evidence for this hearing. It shows that the tenancy began on May 30, 2017 on a month-to-month basis for rent in the amount of \$1,200.00 per month payable on the 1st day of each month. It also shows that the sub-tenants paid a security deposit in the amount of \$600.00, and the agreement was executed on May 30, 2017 with 2 sub-tenants.

Statements and receipts are given to the landlord. However, on May 1, 2019 access to the other side of the duplex was cut off.

From May to September, 2019 the tenant paid \$400.00, or less, being her portion of the rent for the building. The sub-tenants, one of whom is named as a tenant in this application, stopped paying his portion and the tenant threatened to evict him. He was not evicted because he said that he paid the landlord directly, so the tenant reduced her

rent to \$400.00 per month. Copies of text messages between the tenant and the sub-tenant have been provided for this hearing, which indicate that the sub-tenant has been paying the owner directly.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*.

Having reviewed the evidence, there is no question in my mind that rent is \$1,600.00 per month. Where a tenant is permitted to sublet but that portion is not rented, the tenant is still required to pay the full amount of rent, which clearly has not been the case. The tenant has provided a copy of a tenancy agreement naming 2 sub-tenants, and the tenant testified that as a result of the previous hearing, she is permitted to sublet. I accept that, but the tenant has no legal right to reduce rent. The *Act* states that even if the landlord fails to comply with the *Act* or the tenancy agreement, the tenant must still pay the rent. Therefore, whether or not access to the other side of the duplex was cut off from the tenant, the tenant ought to have made an application to the Residential Tenancy Branch rather than reduce the rent payable to the landlord.

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent the tenant has 5 days to pay the rent, in which case the Notice is of no effect. In this case, the tenant has not paid the rent and testified that she was told that the sub-tenant was paying a portion directly to the landlord. The tenant technically had 5 days to confirm with the landlord that someone else paid a portion of the rent, but did not get any confirmation from the landlord that had happened. The landlord has provided a copy of a letter addressed to the tenant confirming that no rent had been paid by the sub-tenants. The tenant did not pay the rent, and I dismiss the tenants' application to cancel the Notice.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 17, 2019

Residential Tenancy Branch