



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, DRI, RP, RR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on September 6, 2019, to cancel a One Month Notice to End Tenancy for Cause (the “1 Month Notice”), to have repairs made to the unit, to reduce rent for repairs, to dispute a rent increase, and to have the landlord comply with the Act.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and Procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notices to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notices to End. The balance of the tenant's application is dismissed, with leave to re-apply.

Issue to be Decided

Should the Notice be cancelled?
Should the 1 Month Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice on September 6, 2019. The tenant stated they have been paying an illegal rent increase of \$20.00 since February 2019, totaling the amount of \$140.00. The tenant stated that the landlord reduced the rent back to the original amount and that they decided to pay the landlord the original amount of rent in the amount of \$650.00.

The tenant testified that they withdrew the rent money from the bank on the first of September 2019 and was trying to pay rent; however, the landlord was purposely avoiding them. The tenant stated that it was between noon and 1:30 pm on September 7, 2019, that they gave the landlord the rent in cash, while the landlord was out mowing the lawn. The tenant stated that the landlord signed the receipt for rent on September 7, 2019. The tenant stated they did not pay rent for October 2019. Filed in evidence is a signed copy of the receipt. Filed in evidence is a copy of an unsigned receipt, cash, and debit receipt.

The landlord testified that they tenant did not give them rent for September 2019 or October 2019. The landlord stated that on September 7, 2019, they were at work until 1:30pm and then came home and had lunch with their family. The landlord stated they did cut the lawn that day about 4:30pm; however, the tenant did not come out and give them any rent.

The landlord testified that they always sign receipts when they accept rent paid in cash by the tenant. The landlord stated that they did not sign any receipt for September 2019, as rent was not paid. The landlord stated they not receive a copy of the rent receipts filed as evidence by the tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

*(a) pay the overdue rent, in which case the notice has no effect,
or*

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

While the tenant may have had grounds to withhold a portion of rent in the amount of \$140.00 for an overpayment of rent. The evidence of the tenant was that took the rent money out of the bank on September 1, 2019 and was attempting to pay the rent. I find the tenant was not credible on this issue as the receipt they provided shows they took the money out of their account on September 7, 2019 and not on the first of the month as testified.

Further, I do not accept the testimony of the tenant that they paid the landlord rent between noon and 1:30 PM on September 7, 2019, as the banking receipt shows the money was taken out of their account on September 7, 2019 at 1:44pm, which does not support the tenant's testimony.

Further, I do not accept the receipt as genuine. The tenant stated it was signed by the landlord on September 7, 2019; however, the picture which contains an unsigned receipt, cash, and banking slip, to support rent was paid, shows the screen shot was taken on September 11, 2019, which is after it was said to have been signed. Which leads me to believe the tenant falsified the evidence, including the signed receipt. I accept the evidence of the landlord that they did not receive the rent or sign any receipt on September 7, 2019.

Based on the above, I find the tenant is not credible on the issue of paying rent for September 2019. I find the Notice is valid and remains in full force and effect.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act. I find the tenancy legally ended on September 16, 2019, and the tenant is overholding the rental unit.

As I have dismissed the tenant's application, I find the landlord is entitled to an order of possession.

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 find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As I have found the tenancy legally ended based on unpaid rent, I find I do not need to consider the merits of the 1 Month Notice.

Conclusion

The tenant's application is dismissed. The landlord is granted 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: October 04, 2019

Residential Tenancy Branch