



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY OF THE WHOLE PERSON
NONDENOMINATIONAL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy dated and received November 3, 2020. She also seeks recovery of her filing fee.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant failed to pay rent as claimed in the Notice?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in May 2018. The current monthly rent is \$1800.00, due on the tenth of each month. It was determined in an earlier arbitration that the landlord holds an \$85.00 security deposit.

There is no written tenancy agreement.

It is not disputed that the tenant failed to pay September and October rent totalling \$3600.00 as demanded in the Notice. The tenant has not paid any rent since August to the date of this hearing.

The tenant testifies that she has been unable to pay rent because the landlord cut off the internet to her suite. She says that when the tenancy started the landlord gave her the password to a wifi connection in the building which she used continuously until

August or September, when the wifi ceased working. She requested a new password but was refused.

The tenant says she conducts her monetary affairs by computer. Without a connection she says she was unable to carry on the fundraising part of her work and was unable to receive funds from her work or to e-transfer rent to her landlord. She acknowledges that in the past she paid rent mostly by cash but that with the CoVid-19 pandemic and her health she has been virtually confined to her apartment. She produces text messages between her and persons in her occupation remarking on her lack of internet access and its effect on funding. The correspondence appears to be dated from mid-October 2020 and early November 2020.

The tenant acknowledges having a cellphone. She says she is unfamiliar with the use of a cellphone as “hotspot” or router connection for her laptop to the internet. She says she could not use public wifi, for instance the wifi at a nearby coffee shop, because it was unsecure and her work requires high security; it is “super secured.”

The tenant also says the landlord has shut off her hot water heating, though this allegation is not part of her claim and in the face of the landlord’s denial, cannot be adjudicated at this hearing.

The landlord testified that internet was not provided with this tenancy, however one of the tenant’s neighbour in the building had a router and he gratuitously gave the tenant the password for that router at the start of the tenancy. He does not deny the tenant’s assertion that at various times during the tenancy he responded to the tenant’s request to “reboot” it.

The landlord says that the person supplying the wifi connection found that her connection was being slowed by all the use and so finally changed the password, thus cutting off the tenant’s access. The landlord says this occurred in October or November and not in August or September as the tenant alleges.

He says there is an internet (coaxial) cable installed in the rental unit and the tenant could simply have called an internet service provider to deliver a modem and open an account. He says he spoke to the tenant’s “director of funding” asking rent be paid directly to him but it was not.

Analysis

Internet

The landlord has put himself in a difficult position by failing to prepare a written tenancy agreement (as he is required to do under s. 13(1) of the *Residential Tenancy Act* (the “RTA”)). Whether it was a gratuitous gesture or was part of the rent cannot be determined on the competing testimony. However, the fact is that it was provided to the tenant at the start of the tenancy at no cost. I find that “internet” was a service or facility included in the rent in the form of “free wifi.”

The Tenant’s Circumstances

The tenant’s version of events, that the removal of the wifi prevented her from working to get money to pay rent, is not a likely version. She has a laptop and a cellphone with which to gain access to the internet and to her work and to her banking. Her concern about security in using public wifi has not been shown to be a valid concern at this hearing. It has not been shown why public wifi or the wifi available at a nearby coffee shop would be any less secure than the anonymous wifi available to her in the apartment building. The tenant had internet availability in her suite and would merely have had to call a service provider. That would have been at a cost, but it would have been a cost she could justly claim back from the landlord because he removed her original connection.

I think it most likely the wifi service was cut off in October and not August or September. The texts submitted by the tenant and which refer to the wifi, are dated in October. The tenant’s text to the landlord requesting the “key” for the internet is dated October 16. By that time the tenant was two months behind in rent. The same two months rent demanded by the landlord in the ten day Notice.

Generally speaking, there was no obligation on the landlord to accept rent by e-transfer without a specific agreement to do so. On reasonable notice he was at liberty to decline payment in that form and demand a more conventional method, like cash, which is lawful tender (*Currency Act*, R.S.C., 1985, c. C-52, s. 8.1).

In any event, s. 26(1) of the *RTA* provides:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

While the tenant may have good cause to seek damages from the landlord for his failure to provide internet wifi, the tenant continued to be obliged to pay rent as it came due.

If the loss of internet prevented her from carrying on her work in her normal fashion, then she was obliged to make the rather straightforward adaptations of either installing or locating another internet source in order to mitigate her loss.

Conclusion

The ten day Notice was a valid Notice to End Tenancy for unpaid rent that was property due and payable. Pursuant to s. 46 of the *RTA*, it has resulted in the ending of this tenancy on November 14, 2020.

By operation of s. 55 of the *RTA* an arbitrator is bound to issue an order of possession to the landlord in these circumstances. The landlord will have an order of possession effective 48 hours after personal service on the tenant or 72 hours after a copy of the order is attached to a door to the premises, whichever occurs first.

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: February 01, 2021

Residential Tenancy Branch