



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and the landlord was represented by an agent and accompanied by an Interpreter, who was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the interpreter's skill and ability. The landlord's agent and the tenant each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing I learned that the landlord served the tenant in person on November 20, 2023 with the landlord's evidentiary material, however the tenant has not provided any evidence to the landlord. Any evidence that a party wishes to rely on must be provided to the other party, even if they already have a copy, because it is important for all parties to know what is before me. Since the tenant has not provided the landlord with the tenant's evidence, I decline to consider it. All evidence of the landlord has been reviewed and the evidence I find relevant to the tenant's application 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 November 3, 2023 was issued in accordance with the *Residential Tenancy Act*?

- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 1, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$2,800.00 is payable on the 1st day of each month. On March 22, 2023 the landlord collected a security deposit from the tenant in the amount of \$1,400.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family house, and the landlord does not reside on the property. A copy of the tenancy agreement has been provided by the landlord for this hearing.

The landlord's agent further testified that the tenant was served personally on November 3, 2023 with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice). A copy has been provided for this hearing and it is dated November 3, 2023 and contains an effective date of vacancy of November 14, 2023 for unpaid rent in the amount of \$7,200.00 that was due on November 1, 2023.

The tenant failed to pay rent in full for the month of September, 2023 and still owes \$1,600.00. No rent has been paid for October or November, 2023. There has been an expansive history of late payments, sometimes almost 2 months with no or only some of the rent paid. The landlord suffers with mortgage payments, putting the landlord in a difficult financial position. On June 4, 2023 the tenant said that he didn't have rent money, which continued into July. The tenant paid \$1,200.00 rent for September, 2023, and on September 29, 2023 the tenant texted the landlord saying he would have the money by October 15, 2023 or sooner. One day prior to October 15, the tenant texted again saying he couldn't pay until October 25, and would have the full rent of \$2,800.00.

The landlord has never been served with any evidence that other payments were made. The Notice was completed in accordance with the *Act*.

The landlord's witness testified that the witness served the tenant with the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities. It is a 3-page form, and 2 pages were handed to the tenant and the 3rd page was attached to the door. The witness does not recall when that occurred, but it was evening time.

The tenant testified that since the beginning of the tenancy the tenant had to speak to the landlord's son about renting. The landlord's son said he would give the tenant a

copy of the tenancy agreement, but didn't, and said the landlord's wife was out of the country who would also sign it. The tenant had no indication of when rent was due.

On March 12, 2023 the tenant gave the landlord a \$1,400.00 security deposit and a \$1,400.00 pet damage deposit in cash.

The tenant paid rent every month, but since there was no indication of when rent was due, the tenant paid when he could; the tenant receives income assistance. The tenant always paid in cash and no receipts were ever given by the landlord. The tenant believes that only rent for the month of November, 2023 is outstanding.

The tenant denies receiving all 3 pages of the Notice, having been given only 2, then was asked to go into the house so the person could tape it to the door. The tenant did not receive 3 pages of the Notice, and didn't get a copy of the tenancy agreement, which was not completed in the tenant's presence. The tenant started to get concerned about having no receipts, and has November's rent money, but wants receipt.

When asked if the tenant has any proof that an additional \$1,600.00 for September's rent and \$2,800.00 for October's rent have been paid, considering the text messages provided by the landlord, the tenant testified that he drove to the landlord's home, and not everything was done by text messaging.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord has never been asked to give receipts to the tenant, and the landlord requested payments by cheque. Two months' of rent and 1 partial month are overdue, causing a financial hardship on the landlord, who has been very lenient to the tenant but has exhausted all options. There was no pet deposit collected by the landlord.

SUBMISSIONS OF THE TENANT:

This whole thing has been lies by the landlord, and is not relevant considering that the tenant never received a copy of the tenancy agreement.

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*. The law also states that any notice to end a tenancy given by a landlord must be in the approved form.

I have reviewed all of the landlord's evidence, including the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities. The evidence contains all 3 pages of the approved form.

I also consider the testimony of the landlord's witness, who testified that 3 pages were served, 2 by hand and 1 attached to the door. The witness does not recall when, only that it was in the evening.

The tenant testified that he only received 2 pages of the Notice, and I find that believable, considering the testimony of the landlord's witness. The onus is on the landlord to establish that it was given in accordance with the law, and I am not satisfied that it was. Therefore, I cancel the Notice and the tenancy continues.

The *Act* requires a landlord to give receipts where a landlord collects money from a tenant in cash. The landlord's agent did not dispute that receipts have not been provided, but testified that the tenant didn't request any. That is contrary to the law, and I order the landlord to provide receipts to the tenant for any payments made to the landlord in cash.

With respect to the outstanding rent, I have no idea in the evidence what is owed, nor do I know how the landlord keeps track. The tenant testified that he never received a copy of the tenancy agreement, and the landlord's agent testified that the tenant took a photograph of it and a copy was provided to the tenant at a later date. Regardless, the tenant is well aware that rent is \$2,800.00 per month, every month. I order the landlord to provide a copy of the tenancy agreement to the tenant, even if the tenant was already given a copy, immediately. Pursuant to my authority under Section 62 (3) of the *Act*, I order the tenant to comply with the tenancy agreement and pay rent when it is due.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated November 3, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order the landlord to comply with the *Residential Tenancy Act* by providing the tenant with receipts for any money accepted in cash, and I order the landlord to immediately provide a copy of the tenancy agreement to the tenant.

I further order the tenant to comply with the law and the tenancy agreement by paying rent when it is due.

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: December 01, 2023

Residential Tenancy Branch