

INTERIM DECISION

Dispute Codes CNR OLC OPT AS O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent, to obtain an order to have the Landlord comply with the Act, obtain an Order of Possession of the rental unit, allow the Tenant to assign or sublet the rental unit, and other issues.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord by the Tenant on November 18, 2009.

The two Landlords, the Tenant, and the Tenant's Advocate appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to Orders to cancel the 10 Day Notice to End Tenancy, have the Landlord comply with the Act, obtain an Order of Possession, and enable the Tenant to sublet under sections 46, 62, 54, and 65 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts are the verbal tenancy agreement began on July 25, 2007 when the Tenant took possession of the two bedroom apartment with rent payable on the first of each month in the amount of \$650.00. A security deposit of \$325.00 was paid on or before July 25, 2007. From the onset of the tenancy the full rent and the full security deposit was paid directly to the Landlord from the Ministry of Human Resources - Social Assistance (the Ministry) by cheques made payable to the Landlord.

The Tenant testified that approximately two months after the onset of the tenancy, October 2007, he took in a roommate with the permission of the Landlord. The Tenant argued that the Ministry was informed of the living arrangement and that the Landlord was paid the rent by two separate cheques issued directly to the Landlord from the Ministry.

The Tenant stated that in order to have the rent payments issued to the Landlord, the Ministry required the Landlord to sign "intent to rent forms". The Tenant testified that he was advised by the Landlord to complete these forms, on the Landlord's behalf, so the Landlord would not be required to drive all the way across town to complete the forms.

The Tenant testified that he has only ever dealt with Landlord (2) and that Landlord (2) has been informed every time the Tenant's roommate has changed. The Tenant argued that he has had approximately six or seven roommates since the onset of the tenancy in 2007 and that every roommate has had their rent paid directly to the Landlord by the Ministry.

The Tenant confirmed that there have been periods of time when he has not had a roommate but that he has always worked to find compatible roommates so the Landlord could be paid the full rent.

Landlord (1) testified that the rent has been late or short paid on many occasions while the Tenant is looking for another roommate. Landlord (1) confirmed that the Tenant's rent payments have consistently been paid by the Ministry since October 2007 in the amount of \$325.00, however the remainder of the \$650.00 rent has been paid inconsistently by the Ministry as the Tenant's roommates move in and out.

Landlord (1) testified that the 10 Day Notice to End Tenancy that was issued on November 13, 2009 for \$1,350.00 in unpaid rent and was served personally to the Tenant by Landlord (2) on November 13, 2009. Landlord (2) confirmed the service.

Landlord (1) advised that they determined the outstanding rent amount to be \$1,350.00 because the payments made by the Ministry, on behalf of the Tenant, have been applied to previous outstanding balances which leaves \$50.00 owing for September 2009 and the full rent of \$650.00 for the months of October and November 2009.

When I asked for testimony of an accounting, month by month of outstanding rent amounts, neither Landlord was able to provide me with testimony of when rent was short paid or when payments were made towards this rental unit either in cash or by the Ministry.

The Advocate testified that he had previously requested a written accounting of the Tenant's rent payment history and that he has not received anything. The Advocate argued that the Tenant has made additional payments towards his rent in the form of money orders of \$275.00 on November 10, 2009, 2 at \$50.00 on November 20, 2009, and \$275.00 on December 9, 2009, and these money orders were paid in addition to the payments made directly to the Landlord by the Ministry and were accepted by the Landlord after the 10 Day Notice to End Tenancy was issued.

Landlord (1) confirmed that he has received the money orders and the Ministry payments of the Tenant's rent, after the issuance of the 10 Day Notice to End Tenancy was issued. Landlord (1) confirmed that he has not issued receipts to the Tenant for these additional rent payments and argued that he is not required to issue receipts for cheques received by the Ministry or non cash payments.

The Tenant provided testimony that he has been told by the Landlord that it is his responsibility to find new roommates and to arrange to complete the intent to rent forms so the Landlords are paid directly by the Ministry. The Tenant advised that he thought he had to pay the Landlord whatever they told him was outstanding.

The Tenant testified that he has a new roommate, that this new roommate is very suitable and has no outstanding issues. The Tenant argued that the Landlord has already been paid \$275.00 directly by the Ministry for this new roommate's rent and that the Landlord is now trying to evict this new roommate. The Tenant is seeking permission to keep this new roommate to ensure the rent is being paid.

Landlord (1) attempted to search his records to determine if he received the payment in the name of this new roommate however the Landlord was unable to acknowledge or verify if any payments have been received during the course of the hearing.

The Tenant testified that he was given a verbal eviction at the end of August and was told that he would have to vacate the rental unit on December 1, 2009 so the Landlord could do renovations.

The Landlord confirmed that the Tenant was issued a verbal notice to end the tenancy however it was not for renovations rather it was because the Tenant was refusing to allow the pest control company to spray for cockroaches in his apartment and has actually refused the pest control company entry into his suite.

The Tenant testified that he has a cat and that the pest control spray is toxic to cats and the Tenant had requested that they use a less toxic manner to treat the cockroaches. The Tenant argued that he has never refused access to his suite to the pest control company and that the pest control company has failed to show up on two occasions that Landlord (2) told the Tenant they were going to attend.

The Advocate confirmed that they are seeking to have the Landlord comply with the Act, to determine details of the tenancy and provide the Tenant with a written tenancy agreement, listing the terms of the Tenant's tenancy agreement.

As the hearing time came to an end, I began to summarize the testimony when Landlord (1) became upset and stated that the Landlord has never asked or authorized the Tenant to complete welfare forms on behalf of the Landlord.

The Tenant confirmed that he has always dealt with Landlord (2) and this Landlord has refused to drive over to complete the intent to rent forms and has told the Tenant to complete the forms to get the rent paid.

The hearing time expired and I informed all parties that I would provide this interim decision and a notice to reconvene at a future date to resolve the remaining items in the Tenant's application.

Analysis

The Landlord has accepted and cashed rent payments, on behalf of the Tenant, without providing the Tenant with receipts for use and occupancy only, thus waving the 10 Day Notice to End Tenancy issued on November 13, 2009 causing the tenancy to be re-instated.

The hearing time expired prior to reviewing all of the items applied for by the Tenant and the parties were advised that the hearing would be reconvened at a future date.

Conclusion

The 10 Day Notice to End Tenancy issued on November 13, 2009, is hereby cancelled and of no force or effect.

With the first hearing time being expired prior to the review of the full application, I hereby order that the proceeding be reconvened at a future date, in accordance with section 74 of the Act. A copy of the Notice of Reconvened Hearing will accompany this Interim Decision and will be sent directly to both parties.

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 24, 2009.

Dispute Resolution Officer