



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on October 3, 2011, be cancelled?

Background and Evidence

The parties agreed that the tenancy commenced in April, 2011; rent is \$1,023.00 per month, due on the first day of each month.

The tenant did not submit a copy of the 10 Day Notice Ending Tenancy for Unpaid Rent with was issued and given to her on October 3, 2011. The parties each had a copy of the Notice before them and confirmed the content and form of the Notice.

The tenant confirmed she had paid \$500.00 of October, 2011, rent due. The tenant withheld the balance of October rent as she has been having problems with another occupant and feels the landlord has not addressed her concerns. The tenant confirmed she did not have an Order allowing her to make deductions from the rent owed.

The tenant stated she had applied to dispute the Notice and had originally requested more time, as she wished to prepare to submit evidence supporting the deduction made from the rent owed in October. The tenant did not supply any evidence, nor did she amend her application requesting a monetary Order or rent reduction.

The landlord stated that she wants the tenant to move out. The landlord is willing to allow the tenant until November 2, 2011, to pay all of the rent in full; \$523.00 October rent and \$1,023.00 November rent. If the tenant pays all rent due by November 2, 2011, the landlord will reinstate the tenancy. If rent is not paid the landlord stated she would allow the tenant to remain in the unit until November 30, 2011.

Analysis

The tenant did not have an Order allowing her to make deductions from rent owed. Despite the confusion experienced by the tenant when she submitted her application, the Notice ending tenancy is clear, she must pay rent in full when it is due, or within 5 days of receipt of the Notice. When a tenant disputes a Notice they must show evidence that rent has been paid. Even if the tenant had come forward with an application requesting rent reduction, this would not have allowed her to make a retroactive deduction from rent that was due on October 1, 2011.

Section 55(1) of the Act provides:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's Application to cancel the Notice; as she did not pay the rent due on October 1, 2011, or within 5 days of October 3, 2011. The landlord stated she wanted the tenant to move out; the equivalent of requesting an Order of possession. Therefore, I find that the landlord is entitled to an Order of possession effective at 1 p.m. on November 30, 2011; the date requested by the landlord.

By agreement of the parties, the tenant has until November 2, 2011, to pay October rent in the sum of \$523.00 plus all of November rent due. If this rent is paid in full by November 2, 2011, the parties have agreed that the tenancy may continue; the Order of possession will not be enforceable. In this case the landlord should issue the tenant a receipt indicating the tenancy may continue and that it has been reinstated.

I explained to the parties that if a rent payment is made after November 2, 2011; the landlord may choose to issue a receipt for use and occupancy only; which will indicate that she does not wish to have the tenancy continue beyond November 30, 201; the Order of possession will be enforceable.

If the tenant pays all of the rent owed after November 2, 2011, the landlord may choose to issue a receipt indicating she has reinstated the tenancy; in which case the Order of possession will not be enforceable and the tenancy will continue.

Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on October 3, 2011, is of full force and effect.

The tenant's Application for dispute Resolution is dismissed and, based upon the oral request of the landlord I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act; effective November 30, 2011, as requested by the landlord.

The parties have reached agreement that if all rent owed is paid in full by November 2, 2011; the landlord will issue a receipt indicating the tenancy has been reinstated and the tenancy will continue.

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: November 02, 2011.

Residential Tenancy Branch