



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNR, OPR, FF

Introduction

The tenant has applied for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy for unpaid rent.

The landlord has also applied for dispute resolution, and requests an Order of Possession, and a Monetary Order for unpaid rent.

Issues to Be Decided

- Is the Notice to End Tenancy (the “Notice”) served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenant to the landlord?

Background and Evidence

This tenancy began on September 1, 2012. Rent is due on the 1st day of each month in the amount of \$1,075.00. The tenant had a roommate who was contributing towards the rent payments. A term of the written tenancy agreement required the roommate to apply in writing to become a permanent occupant, and failure to apply and obtain the necessary approval of the landlord in writing was considered to be a fundamental breach of the agreement. The landlord was not provided sufficient information in order to approve the roommate. When the landlord persisted in pointing out the requirements, the roommate and the tenant felt they were being harassed. The roommate elected to move out in March, and the tenant paid no further rent. When April's rent was not received, the landlord served the tenant with a 10 day notice on April 4, 2012, to end the tenancy. The tenant filed a dispute of that notice, but after the required 5 day period had passed. The tenant paid no further rent for April or May.

Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay her rent on the first day of each month, even if she felt the landlord was harassing her. In fact, the evidence before me does not confirm that the landlord has harassed the tenant. The reminding of the tenant or her roommate of the specific terms of a tenancy agreement are not harassment in this case.

The withholding or non-payment of rent was not a legal option for the tenant, and the landlord was therefore entitled in law to serve the notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so.

The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim is dismissed. As requested by the landlord, the order shall be effective May 31, 2013.

The landlord is entitled to an award of \$2,150.00 representing the lost rent for April and May, plus \$50.00 as recovery of the landlord's filing fee.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective May 31, 2013. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$2,200.00, representing the rental arrears and the recovery of the filing fee.

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: May 09, 2013

Residential Tenancy Branch