



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES L.P.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant's Application is seeking an order to cancel a one month Notice to End Tenancy issued for alleged cause.

The Landlord filed an Application for an order of possession based on unpaid rent, and requested monetary orders for unpaid rent and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Notice to End Tenancy for unpaid rent valid?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Should the one month Notice to End Tenancy for unpaid rent be cancelled?

Background and Evidence

This tenancy began on October 1, 2013, with the parties entering into a statutory form tenancy agreement, for a fixed term of one year. The Tenant was to pay \$860.00 in rent on the first day of each month and paid the Landlord a security deposit of \$430.00 on or about September 14, 2013.

Based on evidence submitted, the Tenant was served with a one month Notice to End Tenancy for alleged cause on or about November 5, 2013. The Tenant filed to dispute the one month Notice on November 12, 2013.

Based on the testimony and evidence submitted of both parties, I find that the Tenant was then served with a 10 day Notice to End Tenancy for unpaid rent on December 4, 2013. The 10 day Notice informed the Tenant that it would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant did not apply to cancel the 10 day Notice for unpaid rent. The Tenant paid the Landlord \$710.00 of the \$860.00 due, and a balance of \$150.00 remained unpaid as of the day of this hearing. The Tenant testified she did not have the money to pay the Landlord this balance in December and had intended to pay the balance when she paid the January 2014 amount to the Landlord, although in the end, she did not have the money at that time either. The Tenant testified she was having problems with the rental unit as well.

The Agent for the Landlord testified the Tenant did not pay the balance of rent from December 2013 on January 1, 2014. When the Tenant paid for January 2014, the Landlord issued a receipt for use and occupancy only, noting to the Tenant that this did not reinstate the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant has not paid all the rent due to the Landlord and did not file to dispute the 10 day Notice to End Tenancy, and therefore, the 10 day Notice to End Tenancy is valid and must be upheld. Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from the Residential Tenancy Branch allowing her to do so or had some other authority allowing her to withhold rent. I find there was no other authority under the Act for the Tenant to not pay all rent when due. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord.

Under section 46(5) of the Act, when the Tenant failed to pay all the rent or to dispute the 10 day Notice to End Tenancy for unpaid rent, the Tenant was conclusively presumed to have accepted the tenancy ended on the effective date of the 10 day Notice, which was December 14, 2013.

Therefore, I allow the Application of the Landlord and grant an order of possession for the rental unit and a monetary order for unpaid rent of \$150.00 and the \$50.00 filing fee for the Application.

I grant the Landlord an order of possession effective two days after service upon the Tenant.

As the Tenant has paid for use and occupancy of the rental unit in January 2014, the Agent for the Landlord agreed to pro-rate the amount due for January 2014 and return the appropriate balance to the Tenant when she vacates the rental unit.

I find that the Landlord has established a total monetary claim of \$200.00, comprised of \$150.00 in rent due for December 2013, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord may retain **\$200.00** from the deposit of \$430.00 in full satisfaction of this claim and the balance of the security deposit (\$230.00) must be dealt with in accordance with the Act at the end of the tenancy.

Lastly, as the tenancy is ending due to the 10 day Notice to End Tenancy for unpaid rent, it is unnecessary to examine the one month Notice to End Tenancy, and therefore, the Tenant's Application is dismissed without leave.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 06, 2014

Residential Tenancy Branch

