



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for nonpayment of rent.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to uphold or cancel a Notice to End Tenancy that was given for nonpayment of rent.

Background and Evidence

The parties agree that this tenancy began on May 1, 2015, and that the present monthly rent is \$1300.00 due on the first of each month.

The parties also agree that the landlord personally served the tenant with a 10 day Notice to End Tenancy on April 25, 2016.

The landlord testified that the tenant failed to pay the April 2016 rent, and therefore the 10-day Notice to End Tenancy was served. The landlord further stated that the tenants

have paid no further rent since receiving the notice, and as of today's date there is a total of \$5750.00 in rent outstanding, plus a total of \$1378.71 in utilities outstanding.

The landlord is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued for as soon as possible.

The tenant testified that she does not know the exact amount of rent outstanding but does not believe that it is as much as the landlord claims. She further stated that there is probably one or two months' rent outstanding at this time and that's all.

The tenant also testified that they withheld rent because they have done work at the rental property for which they have not been paid.

Analysis

Section 46 of the Residential Tenancy Act states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

It is my finding that the tenants failed to pay the April 2016 rent and therefore the landlords ten-day Notice to End Tenancy is a valid notice.

Further section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenants did not have the right to deduct any money from the rent, and since the tenant testified that, as of today's date, there is still a substantial amount of rent outstanding, although she was unable to give the exact amount, it is my decision that I will not cancel the Notice to End Tenancy.

Conclusion

This application is dismissed without leave to reapply, and pursuant to Section 55 of the Residential Tenancy Act, I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

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: June 06, 2016

Residential Tenancy Branch