



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent. The landlord was represented by legal counsel only. The tenant appeared along with an Advocate. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties exchanged their respective hearing documents upon each other and I admitted the documents into evidence.

I have amended the style of cause to reflect the rental unit is a cabin on the property.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy started in June 2012 under an oral agreement. The tenant is required to pay rent of \$450.00 plus utilities on the first day of every month. The tenant did not pay a security deposit.

It is undisputed that the tenant withheld rent for the month of April 2019 and on April 14, 2019 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The 10 Day Notice indicates rent of \$1,800.00 was outstanding as of April 1, 2019 and \$260.00 in utilities was outstanding despite a written demand that was issued on April 1, 2019. The 10 Day Notice has a stated effective

date of April 25, 2019. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice within five days of receiving the 10 Day Notice.

The tenant paid rent for May 2019 on May 22, 2019 and rent for June 2019 was paid on June 12, 2019. The tenant has yet to pay rent the outstanding rent for April 2019 and has not paid any rent for July 2019 yet.

The landlord's representative orally submitted to me that the outstanding rent of \$1,800.00 that appears on the 10 Day Notice represents rent owed for April 2017, July 2017, March 2019 and April 2019. I noted that the details of dispute do not indicate those four months and the landlord did not provide a detailed breakdown of the amount owed in the evidence submitted to me by or on behalf of the landlord.

The tenant was of the position she has paid or otherwise satisfied the rent for April 2017, July 2017 and March 2019; however, she acknowledged that she withheld rent for April 2019 to "get the landlord's attention" in hopes he would make certain repairs.

The tenant stated that she had a meeting with the landlord in an effort to show him how she satisfied the rent for those three months in dispute but that he would not accept her position.

The tenant indicated that she did not file to dispute the 10 Day Notice because when the 10 Day Notice was served to her, the landlord told her she could stay until December 2019 and the tenant was willing to vacate by then.

The landlord's representative had no knowledge as to what was said to the tenant when the 10 Day Notice was served and he did not call the landlord to the hearing to testify.

During the hearing, the tenant testified that she is agreeable to vacating the rental unit by October 31, 2019 and will pay the outstanding rent for April 2019 and July 2019 and every month thereafter on the first day of the month. The tenant stated that in the past she has ordinarily paid rent by depositing cash into the landlord's bank account; however, there have been occasions the landlord's bank account is "frozen" and she has been unable to deposit money. The tenant confirmed that she does have the landlord's email address and sending the landlord rent via an e-transfer was agreeable to the tenant and landlord's representative.

I informed the parties that I make no finding as to whether the tenant owes rent for April 2017, July 2017 or March 2019 since it is not necessary to make a decision concerning an Order of Possession and the landlord did not request a Monetary Order. Rather, I encouraged the parties to try to resolve their dispute concerning the rent for April 2017, July 2017 and March 2019 but that if they are unable to do so the landlord may file another Application for Dispute Resolution to request a Monetary Order for unpaid rent.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent. Having outstanding repair issues and trying to “get the landlord’s attention” is not a legal basis for withholding rent. Accordingly, I find the tenant was required to pay rent for April 2019 and she failed to do so.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date.

In this case, the tenant did not pay the outstanding rent for April 2019 despite receiving a 10 Day Notice. Nor, did the tenant file to dispute the 10 Day Notice. Accordingly, I find the tenant is conclusively presumed to have accepted that the tenancy would end for unpaid rent pursuant to section 46(5) of the Act.

The tenant submitted that she did not file to dispute the 10 Day Notice because the landlord told her she could stay until December 2019. The landlord was not available to refute that position and I found the tenant relatively credible in her testimony so I accept that she relied upon such a statement communication. Therefore, I amend the effective date of the 10 Day Notice to read December 31, 2019.

Having been satisfied the tenancy is ending based on the 10 Day Notice, I find the landlord entitled to an Order of Possession. Since the tenant stated during the hearing the tenant stated she will vacate the rental unit by October 31, 2019 and pay rent for those months, **I order the tenancy shall end on October 31, 2019 and I provide the landlord with an Order of Possession effective on October 31, 2019.**

I further order the tenant to do the following:

- 1. The tenant must pay the full amount of rent and utilities due for the months of April 2019 and July 2019 to the landlord no later than July 12, 2019 by either depositing cash into the landlord's bank account or sending the landlord an e-transfer.**
- 2. The tenant shall pay rent and utilities for the months August 2019 through October 2019 on the first day of those months by depositing the funds into the landlord's bank account or sending the landlord an e-transfer.**

I further authorize that if the tenant fails to comply with my orders above, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date that is sooner than October 31, 2019.

Conclusion

The tenancy ends on October 31, 2019 provided the tenant complies with my orders to pay the outstanding rent and utilities for April 2019 and July 2019 by July 12, 2019 and pays rent and utilities for the months of August 2019, September 2019 and October 2019 on the first day of those months.

I have not made any findings as to whether the landlord is owed rent for the months of April 2017, July 2017 or March 2019 as it was unnecessary to do so in this case. If the parties are unable to resolve that issue between themselves, the landlord is at liberty to file an application for dispute resolution and seek a Monetary Order for unpaid rent.

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: July 05, 2019

Residential Tenancy Branch