



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession of the rental unit for the Tenant.

The Tenant and an agent for the Tenant, M.W. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 45 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenant and her Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenant and her Agent.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by posting them on the rental unit door on April 1, 2021. She said she also talked with building managers about it and she said he was aware of what she was doing. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant and the Agent provided their email addresses at the outset of the hearing. The Tenant also provided the address for the Landlord's property management company as that was the address she had for service to the Landlord. The Tenant also confirmed her understanding that the Decision would be sent to both Parties in this manner, and that any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to an Order of Possession?

Background and Evidence

The Tenant stated that the periodic tenancy began on January 15, 2021, with a monthly rent of \$2,350.00, due on the first day of each month. The Tenant said that she paid the Landlord a security deposit of \$1,150.00, and no pet damage deposit.

The Tenant said that the Landlord served a 10 Day Notice to End the Tenancy for Unpaid Rent that was signed and dated March 19, 2021. It has the rental unit address, and it was served by being posted on the door on March 20, 2021, with an effective vacancy date of April 2, 2021. The 10 Day Notice was served on the grounds that the Tenants failed to pay \$2,350.00 when it was due on March 1, 2021.

The Tenant said she would like to move back in, because she has not found another place to live yet. She also said that her furnishings and even her computer are still in the rental unit, even though the locks were changed. She said she has left voicemail messages for the Landlord explaining that she cannot get her personal belongings out of the rental unit, since the lock was changed.

The Tenant said:

I just want leniency. Also, [R.W.] is also on the tenancy agreement – we're roommates – and he's away for a time; I shouldn't be expected to cover his rent. He's expected back on the 14th and the management company says he has a representative for his half. I thought my roommate changed the locks, but the building manager told me the Landlord changed the locks back to the original locks, but my key still doesn't work.

I want back into the apartment. All my things are there. I showed up with movers and discovered that the locks had been changed.

At this point I was willing to move out. The hydro had been cut off and I'm a full-time student – I need power, that's why I didn't pay my portion of the rent. My roommate was responsible for getting the hydro into his name.

Without the hydro working, I worked at my Dad's and slept [at the rental unit] at night. It was around the 20th or shortly after that when the locks were changed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

RTB Policy Guideline #13 ("PG #13") "Rights and Responsibilities of Co-tenants" helps clarify the rights and responsibilities relating to multiple tenants renting a rental unit under a single tenancy agreement. PG #13 defines Tenants and Co-Tenants as follows:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement. .

[emphasis added]

Co-tenants' joint and several responsibilities are explained in Part C of PG #13:

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due. .

[emphasis added]

Based on the testimony and documentary evidence before me, I find that the Landlord had the right to evict the Tenants for non-payment of rent, after issuing a 10 Day Notice.

In a discussion with the Tenant in the hearing, I infer that she meant to apply to cancel the 10 Day Notice; however, her Application for an order of possession is not the same as applying for an order to cancel the 10 Day Notice. Pursuant to section 46(5) states that a tenant who receives a 10 Day Notice must within five days of receiving this notice, either (a) pay the overdue rent, in which case the notice has no effect, or (b) dispute the notice by applying for dispute resolution for an order cancelling the 10 Day Notice. As such, the Tenant has run out of time to dispute the 10 Day Notice.

Further, if the Tenant wishes to get her personal possessions back from the Landlord, she could apply for an Order for the Landlord to Return the Tenant's Personal Property. I encouraged the Tenant to call our office for any questions she may have about applying for dispute resolution at the Residential Tenancy Branch.

After considering the evidence before me overall, I find that the Tenant has provided insufficient evidence to support her claim for an order of possession of the rental unit from the Landlord. I, therefore, dismiss the Tenant's Application without leave to reapply.

Conclusion

The Tenant is unsuccessful in her Application for an order of possession of the rental unit, as she provided insufficient evidence to support this claim. The Tenant's Application is dismissed without leave to reapply.

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: April 20, 2021

Residential Tenancy Branch