



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the tenants to cancel a Notice to End Tenancy for unpaid rent and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were given to the landlord in person on June 20, 2009. The landlord confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached

Issues(s) to be Decided

Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?

Background and Evidence

This tenancy started on September 01, 2008. This is a month to month tenancy and the rent for this property is \$700.00 per month due on the 1st of each month.

Some time in May, 2009 the landlord served the tenants with a 10 Day Notice to End tenancy. This Notice is invalid as it does not contain the tenants name, the landlords' signature or the date it was signed. On June 15, 2009 the landlord served the tenants with another 10 day Notice to End tenancy for unpaid rent. On this Notice the landlord states that the tenants owe \$2,100.00. The tenants' dispute that they owe rent to the landlord.

The tenants testify that from the outset of the tenancy they have paid \$800.00 each month to the landlord. This additional \$100.00 was to cover the rent for any months that they had

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financial difficulties due to the seasonal nature of the tenants work. The tenants have provided evidence in the form of a receipt signed by the landlords' wife that they paid \$800.00 for September, October, November and December, 2008. The tenants testify that early in January they paid \$1,600.00 rent to the landlord for January and February and on January 21, 2009 they paid \$800.00 for rent for March. In April the tenants testify that they paid another \$800.00. The tenants claim that the Landlord did not issue them with any receipts for the rent payments that they paid in cash each month except for the receipt given in December 2008 which they had to ask for. The rent for May was covered by the overpayments that the tenants had previously made to the landlord since September 2008 totalling \$800.00. This left an overpayment of \$100.00.

The tenants testify that in June 2009 prior to the 10 Day Notice having been issued they spoke to the landlord to inform him that they had the rent for June, 2009. The landlord refused to take this as he insisted that the tenants owed both May and June's rent.

The landlord testifies that the tenants paid \$1,300 in January and \$700.00 in February, 2009. They did not pay rent for March, April, May or June, 2009. The landlord has requested an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the parties and witnesses. Based on the inconsistency between the tenants' evidence and the evidence of the landlord, I find on a balance of probabilities that the tenant has paid rent to the landlord up to the date the Notice that was issued on June 15, 2009. I also find that the tenants did attempt to make their June payment of rent and this was refused by the landlord. The tenant has showed a clear pattern of rent payments for 2008 and due to this and their testimony I find that I prefer their evidence concerning the rent payments made for 2009.

The landlord has not complied with s. 26(2) of the Act by not providing receipts for rent payments made in cash by the tenants. The tenants must pay the rent due to the landlord for June and July, 2009 and obtain a receipt for these amounts



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Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for Cause dated, June 15, 2009 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover their \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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 31, 2009.

Dispute Resolution Officer