



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application to set aside a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Landlord and the Tenants agree the Tenants were required to pay monthly rent in the amount of \$900.00 during the first three months of this tenancy, which began on August 01, 2009.

The Landlord stated the Tenants paid \$300.00 in cash for rent on October 01, 2009 and \$500.00 in cash for rent on October 05, 2009. She stated that she asked the female Tenant for the remainder of the money owed, but she is not certain if she specifically stated that \$100.00 was still owing for rent and \$250.00 was still owing for a portion of the security deposit.

The female Tenant stated that she personally delivered \$600.00 in cash for rent on October 05, 2009. She stated that the Landlord did not advise her that rent was outstanding for October, although she did ask when the remainder of the security deposit would be paid. Both Tenants acknowledge that they still owe a portion of the

damage deposit, in the amount of \$250.00, which they did not want to pay until the Landlord inspected the rental unit with them.

The Landlord submitted a copy of an email, dated October 04, 2009, written by the Tenants to the Landlord, in which the Tenants wrote: "We know we owe you \$350.00...". The Landlord contends that this email corroborates her statement that the Tenants still owe \$250.00 for a security deposit and \$100.00 for unpaid rent.

The male Tenant stated that the Landlord has altered the email dated October 04, 2009. He stated that he wrote the email but it stated that they owed \$250.00 when he sent it to the Landlord.

The Landlord referred to the same email that the Tenants submitted in evidence, in which the email acknowledges that \$350.00 is owed. The Landlord argued that the copy of the email that she submitted is the same as the copy of the email submitted by the Tenants, which she contends shows that she did not alter it. After the Landlord presented this argument, the male Landlord stated that he must have made a mistake when he sent the email, as he intended to declare that they only owed \$250.00.

The Landlord submitted a copy of an email, dated October 05, 2009 at 1738 hours, written by the Tenants to the Landlord, in which the Tenants wrote: "Theres a small error on one of your receipts, stating we owe you \$100.00 in rent..." She submitted a copy of another email, dated October 05, 2009 at 1754 hours, in which the Tenants wrote: "guess we were wrong on the \$100.00 so sorry...". The Landlord contends that this is further evidence that the Tenant owes \$100.00 in rent from October of 2009.

The male Tenant stated that they did not write the email dated October 05, 2009 at 1754 hours. He contends that the email is a forgery and contends that it has been cut and pasted using other emails they have sent. In support of this allegation he argued that the email does not contain the same headings and identifiers that normally accompany emails.

The Landlord denies altering the email dated October 05, 2009 at 1754 hours. She argues that the headings and identifiers are similar to other email correspondence from the Tenants, dated October 04, 2009 at 2000 hours, and October 05, 2009 at 1738 hours, which the Tenants acknowledge sending.

The Landlord and the Tenants agree that the Landlord served their nineteen year-old daughter with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 15, 2009, on October 05, 2009. The Tenants acknowledge that they received the Notice from their daughter on October 05, 2009.

Analysis

The undisputed evidence is that the Tenants were required to pay monthly rent of \$900.00 on October 01, 2009 and that they paid \$300.00 in rent on that day.

After hearing the contradictory evidence provided by both parties, I find that I favour the evidence of the Landlord over the evidence of the Tenant in regards to the rental payment that was made on October 05, 2009. I find that the Landlord's evidence that the Tenants only paid \$500.00 on that date is more credible than the Tenant's evidence that they paid \$600.00 on that date.

In reaching this conclusion, I was strongly influenced by the email that the Tenants sent to the Landlord on October 04, 2009, in which the Tenants acknowledge that they owe \$350.00. I find that this evidence corroborates the Landlord's testimony that the Tenants owed \$100.00 in rent and \$250.00 for their security deposit and refutes the male Tenant's testimony that they only owed \$250.00 for their security deposit.

I find that the Tenant's allegations that the Tenant's email originally declared that they owed \$250.00 and that the email was altered by the Landlord to show that they owed \$350.00 to be entirely unbelievable. In reaching this conclusion I was strongly influenced by the fact that the copy of this email that was submitted in evidence by the Tenant also states that the Tenants owed \$350.00 and that the Landlord could not have altered the Tenants copy of this document.

In reaching the conclusion that the Tenants only paid \$500.00 on October 02, 2009 I was also influenced by the emails dated October 05, 2009 in which the Tenants appear to acknowledge that they still owe \$100.00 in rent. In reaching this conclusion, I placed no weight on the Tenant's allegations that the email was forged by the Landlord, as the email does not appear to be cut and pasted and the headings and identifiers are consistent with other email that has been exchanged between the parties.

On this basis, I find that the Tenants failed to pay \$100.00 in rent from October of 2009. Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenants had the right to deduct any portion of the rent. I therefore find that the Tenants failed to pay a portion of the rent that was due for October of 2009.

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due.

Conclusion

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*, as the Tenants did not pay a portion of the rent that was due from October of 2009. On this basis, I dismiss the Tenants' application to set aside the Notice to End Tenancy, and I grant the Landlord an Order of Possession, as requested at the hearing.

As the Tenants agreed to pay \$100.00 in rent for October and \$1,000.00 in rent for November by November 24, 2009, I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants, with the proviso that the Order cannot be served on the Tenants until November 28, 2009 unless the Tenants fail to pay \$1,100.00 to the Landlord on November 24, 2009. In the event the Tenants fail to pay \$1,100.00 to the Landlord on November 24, 2009, this Order may be served upon them at any time and it becomes effective two days after it is served.

I find that the Tenants' application is without merit, and I dismiss the Tenants' application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

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: November 23, 2009.

Dispute Resolution Officer