



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPE, OPR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an Order of Possession and a monetary order for unpaid rent. The tenants have applied to cancel a Notice to End Tenancy.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and for ending employment; to a monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 46, 48, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

As well, it must be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a letter dated October 16, 2009 to the tenants ending employment and indicating a 1 Month Notice to End Tenancy for Cause was attached;
- A copy of a 1 Month Notice to End Tenancy for Cause dated October 16, 2009 with an effective vacancy date of November 30, 2009, citing the Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee;
- A letter of summary of events leading to issuance of Notices;
- A summary of payroll notices for the tenant showing deductions for rent; and
- Copies of two letters dated June 29, 2009 addressed to and signed by the tenants, one letter states that rent is charged at 50% of the market value of \$1000.00 and another letter that states rent is set at \$500.00 per month, deducted from the tenants' monthly salary.

The tenants have submitted into evidence the following:

- Confirmation by an agent of the landlord of receipt of the Notice of Hearing and evidence;
- A copy of a receipt dated December 1, 2009 in the amount of \$500.00 for use and occupancy for November and December, 2009;
- A copy of a tenancy agreement dated August 1, 2009 signed by the tenants and by the female tenant as representing the landlord for a 3 month fixed term tenancy for a monthly rent of \$500.00 due on the 1st of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 5, 2009 with an effective vacancy date of November 15, 2009;
- A copy of a letter dated October 16, 2009 to the tenants ending employment and indicating a 1 Month Notice to End Tenancy for Cause was attached;
- A copy of a letter dated June 29, 2009 addressed to and signed by the tenants that states rent is set at \$500.00 per month, deducted from the tenants' monthly salary; and
- 3 paystubs each for each tenant.

At the outset of the hearing the tenant testified that he had not provided a copy of the tenancy agreement to the landlord as he thought they would have a copy in the file. During the hearing the landlord searched in the tenant file but did not find a copy of the tenancy agreement. I find the tenancy agreement cannot be considered as evidence in this hearing.

Landlord Agent 1 testified that he served the tenants with the 1 Month Notice to End Tenancy with the letter dated October 16, 2009. The Agent 1 stated that the package also included the tenant's employment records. Landlord Agent 3 confirmed the service, although he could not confirm the entire contents of the package.

The tenant testified that he received the letter, the employment records and his final pay cheque but that the package did not include the 1 Month Notice to End Tenancy. The tenant further testified that the letter dated June 29, 2009 stating that the rent while employed was at 50% of the market value submitted by the landlord was forged.

The landlord provided an explanation of the two letters, stating that one letter was for the tenants so they knew the value of the tenancy and the second letter was used to authorize payroll deductions and avoid confusion over the language in the first letter.

The landlord confirmed that the tenant has provided \$500.00 towards rent for November and December, 2009. The landlord contends the tenants owed \$1000.00 per month for both November and December, 2009.

The tenants contend that part of payroll deductions included \$250 towards November rent so they only owed another \$250.00 as they also assert that rent is only \$500.00 per month.

The landlord testified that the \$250 payroll deduction in question should actually be applied to July 2009 rent. The tenant's countered that they already had a rental outside of this rental unit for the month of July 2009 and would not have entered into an arrangement to pay double the rent for the one month.

Analysis

Section 48 of the Act allows a landlord to end a tenancy of a person who has been employed as a manager of the residential property if, upon giving proper notice:

1. The rental unit was rented or provided to the tenant for the term of his or her employment;
2. The tenant's employment has ended; and
3. The landlord intends in good faith to rent or provide the rental unit to a new manager.

As to the evidence and testimony of the tenants, I find it unlikely that the landlord provided a full package ending the employment arrangement and indicating he was attaching a notice to end tenancy and then not include it in the package to the tenant. I find that the 1 Month Notice to End Tenancy for Cause dated October 16, 2009 was served to the tenants.

Based on this finding I also find the effective date of the end of the tenancy to be November 30, 2009. The tenants chose to not vacate the rental unit and as such, the landlord had to provide alternate accommodation to the new Resident Manager. I accept the landlord's intent was to provide the rental unit to the new Resident Manager.

In the absence of a valid tenancy agreement I must rely on the documentation before me regarding the value of the tenancy were it not to be used as a Resident Managers rental unit. The only evidence to that value is the letter dated June 29, 2009 stating the market value of the rental is \$1,000.00 per month.

As to the tenant's assertion, without any corroborating evidence that the landlord had forged one of the letters dated June 29, 2009 I find the landlord's written explanation of the two versions of the letters as acceptable.

The landlord has provided copies of payroll stubs for the tenants showing that their first pay period ending on July 31, 2009 and that pay was provided every two weeks. As well, the summary of events document submitted by the landlord shows the tenants began their employment as Resident Managers on July 14, 2009.

Again, in the absence of a tenancy agreement and with only disputed testimony by both parties the landlord has not provided sufficient evidence to show that the total rent collected over the entire period of employment should include July 2009 or part of November 2009. I find the tenant has contributed \$250.00 towards November rent via payroll deductions.

This combined with the tenants payment of an additional \$250.00 leaves rent paid for November in the amount of \$500.00. I find the tenant still owes \$500.00 for November 2009 rent. Further, as for December 2009 rent, after deducting the tenants' payment of \$250.00 towards December 2009rent I find the tenants owe \$750.00. In total the tenants owe the landlord \$1,250.00 for unpaid rent.

In finding the tenant has not paid the full rent for either the months of November or December 2009 I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$1,300.00** comprised of \$1,250.00 rent owed and the \$50.00 fee paid by the Landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 16, 2009.

Dispute Resolution Officer