



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, O

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a 10 day Notice to End Tenancy for unpaid rent and for a finding on the rent payable.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I also note that the Tenant had an incorrect name for the Landlord on her Application and that the parties agreed that I should amend the Application to have the Landlord's correct name. The style of cause has been amended to include the correct name.

Issues(s) to be Decided

Is the 10 day Notice to End Tenancy valid, or should it be cancelled?

What is the rent amount payable?

Background and Evidence

On or about March 3, 2010, the Tenant saw a sign on the street indicating the rental unit was available. She contacted the Landlord and he met with the Tenant and her son to show them the rental unit.

The Tenant, and her witness (her son), provided affirmed testimony that when they met with the Landlord he told them the rent was \$650.00 per month. The Tenant accepted

the rental unit and began moving in the next day, and apparently the Landlord helped them unpack. When the Tenant enquired about the tenancy agreement, the Landlord informed her he would return the next day as everyone was tired from the move in.

The Landlord returned to the rental unit the next day and when the Tenant gave him \$650.00 for rent, he became upset and told the Tenant the rent was \$950.00 and that he had not said the rent was \$650.00. The Landlord refused to accept the \$650.00 in rent. The Landlord wanted the Tenant to move out immediately. The Landlord acted in an aggressive fashion and insisted the Tenant had to leave that night. The Tenant had to call the police to deal with the Landlord.

On or about March 5, 2010, the Landlord gave the Tenant a 10 day Notice to End Tenancy for unpaid rent of \$950.00. The Tenant applied to dispute the Notice the same day.

The Landlord testified that this was a verbal tenancy agreement for \$950.00 per month and he had never rented the unit out for \$650.00 in the past. He testified that he had receipts for the rental unit from previous renters showing they paid \$950.00 in rent. The Landlord claims he submitted the receipts in evidence three days before the hearing. It was explained to the Landlord that evidence must be in five business days before the hearing, nevertheless, the receipts were not in front of me for the hearing.

The Tenant's adult son appeared as a witness at the hearing. He testified that he and his mother thought the rent was low at \$650.00 when the Landlord offered it, however, they accepted it at \$650.00.

The witness also testified he saw the Landlord urinating on the front yard of rental unit property in broad daylight. I note the Landlord did not refute this portion of the witness' testimony. The witness also testified that he thought the Landlord was confused or mistaken about the rent amount and other matters.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 13 of the Act by failing to prepare in writing a tenancy agreement.

I accept the evidence of the Tenant and her witness over that of the Landlord. The Tenant and her witness gave more plausible testimony than the Landlord did. The Landlord's testimony was often confusing and contradictory.

This leads me to find that the monthly rent for the rental unit was established as \$650.00.

Therefore, I order that the Notice to End Tenancy is cancelled and it is of no force or effect.

The Landlord could have avoided any dispute as to the amount of rent payable, had he fulfilled his obligations under the Act and prepared a written tenancy agreement which clearly set out the monthly rent payable, along with the other required terms.

However, I also find that the dispute between the parties will make it impossible for the tenancy relationship to continue and therefore the tenancy should end. Both parties were in agreement that the tenancy should not continue, and the Tenant agreed to vacate at the end of April 2010.

Therefore, I order that this tenancy will end at **1:00 p.m. on April 30, 2010**, and the Landlord shall have an order of possession in those terms.

I further order the Tenant to immediately pay the Landlord the sum of **\$650.00** for rent for March 2010, and to pay the Landlord **\$650.00** on April 1, for the April 2010 rent.

If the Tenant fails to pay the Landlord as described above, the Landlord may apply to end the tenancy earlier than April 30, 2010, and for monetary orders.

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: March 26, 2010.

Dispute Resolution Officer