



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlords for the cost of this application.

All named parties appeared, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The tenants provided an evidence package in advance of the hearing which was received within the time provided for in the Rules of Evidence, however the landlord's evidence package was not provided within the times provided. With the consent of the parties, all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

This fixed term tenancy began on May 8, 2009 and expired on April 30, 2010, and then reverted to a month-to-month tenancy. Rent in the amount of \$1,550.00 is payable in advance on the 1st day of each month as well as utilities payable when the landlord provided the quarterly bill. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$750.00.

The male tenant testified that the landlord served the tenant with a notice to end tenancy at a coffee shop, and the landlord had a lawyer with him as a witness. He stated that every so often, the tenants would receive a copy of a water bill from the landlord. The billing system was quarterly, and it doubled in one quarter. The tenants told the landlord they intended to pay the bill they received in October, 2010 but weren't able to pay it immediately.

The tenants also testified that they gave their notice to vacate the rental unit on December 31, 2010, then they were served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 4, 2011, a copy of which was provided in advance of the hearing. They further testified that they received a bill in October, 2010 for June through September in the amount of \$754.48 which was paid on January 25, 2011. They also received a bill on January 12, 2011 for \$1,073.75, and that included the \$754.48 which was paid on January 25, 2011.

The male landlord testified that utilities have been a constant problem. They are billed on a quarterly basis and gave copies of the bills to the tenants. On January 28, 2010 he sent a statement to the tenants showing that the balance of \$121.69 for that year was still outstanding and the District added it to his property taxes

He further testified that on January 12, 2011 he sent a copy of a bill to the tenants with a demand for payment. He also stated that he told the tenants that he was not going to proceed with this hearing and ask for an Order of Possession, but the tenant said he was going to pay. However, the tenant had put a stop payment on the rent cheque for January. The landlords found out 10 days later or more, and then issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but the rent was paid within the 5 days.

Analysis

The *Residential Tenancy Act* states that a landlord may treat unpaid utilities as unpaid rent, for the purposes of issuing a notice to end a tenancy, if the utilities remain unpaid for 30 days after a written demand to pay the utilities is given to the tenant.

The *Act* also states that where a landlord serves a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the outstanding rent (or utilities, if applicable) or apply for dispute resolution to dispute the notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I have evidence from the parties that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for \$1,067.03 of outstanding utilities. That notice is dated January 4, 2011 and has an expected date of vacancy of January 14, 2011. The tenants have applied to dispute that notice because they had already given their notice to end the tenancy, and did not want to be in a position where they had to move prior to the effective date of their notice.

Further, the landlord testified that the tenants were served with another notice to end the tenancy on January 13, 2011 for putting a stop payment on the rent cheque, but the tenants paid within the 5 days, and for that reason, the notice has no effect.

The tenants' evidence package also contains a document dated January 17, 2011 entitled "Tenant's Application for Dispute Resolution – Monetary Order" in which the tenants appear to be claiming \$320.00 including the \$50.00 filing fee. The Tenant's Application for Dispute Resolution before me does not include a request for a monetary order. That application is therefore not considered in this Decision. It has not been adjudicated upon, and I make no findings of fact or law with respect to the merits of that issue.

The only issue left before me is whether or not the notice to end the tenancy issued on January 4, 2011 should be cancelled. In the circumstances, I find that the tenants were served with a notice to end the tenancy on January 4, 2011 for unpaid utilities in the amount of \$1,067.03. The tenants testified that a portion of that bill was for arrears which were paid on January 25, 2011. The tenants did not pay the full amount within 5 days as required by the *Act*, and therefore are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

The landlords have not requested an Order of Possession, presumably because the tenants had already given their notice to end the tenancy at the end of January, 2011.

Conclusion

For the reasons set out above, the tenants' application is hereby 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: February 07, 2011.

Residential Tenancy Branch