



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 16, 2011, for an Order that the Landlord comply with the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord in contravention of the Act?

Background and Evidence

This tenancy started in August 2010 and rent at that time was \$1,200.00 per month payable in advance on the 15th day of each month.

The Tenant claims that he met with the Landlord on November 15, 2010 to pay his rent for November 2010 and at that time the Landlord told him that he was ending the tenancy on December 1, 2010 because he could get more rent for it by re-renting it. The Tenant also claimed that the Landlord told him that he had another tenant was willing to pay \$1,600.00 per month for the rental unit but that the Tenant could stay if he paid it. The Tenant said he didn't know the Landlord could not end the tenancy in this way and he wanted to stay so he paid the Landlord \$1,600.00 for December 2010 rent the same day.

The Tenant said he later discovered that the Landlord could not end the tenancy in this way and that the Landlord had to give him proper notice of a rent increase. Consequently, the Tenant said he withheld \$400.00 from his rent for January 2011 and paid \$800.00 for which he was later issued a receipt by the Landlord. The Tenant said he then paid \$1,200.00 on February 15, 2011 for February 2011 rent and was later issued a receipt by the Landlord indicating that it was payment in full and that there were no rent arrears. The Tenant said that at some point the Landlord wanted him to sign a tenancy agreement which proposed a month-to-month tenancy at \$1,600.00 per month commencing December 1, 2010. The Tenant said the Landlord then approached him with another draft tenancy agreement which proposed a one month fixed term tenancy commencing February 1, 2011 at a rental rate of \$1,600.00 per month. The

Tenant said the Landlord did not provide him with receipts for his rent payments made in cash until February 24, 2011 and has failed or refused to provide him with a tenancy agreement setting out the actual terms of the tenancy.

The Landlord said he served the Tenant in person on February 16, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 16, 2011. The Landlord said the Notice should have stated that there were rent arrears of \$800.00 and not \$900.00. The Landlord claimed that he and the Tenant had a verbal agreement that the tenancy would be for a fixed term ending on December 1, 2010 and that the Tenant would move out on that date. The Landlord also claimed that the Tenant told him on November 15, 2010 that he did not want to move in December 2010 and he offered to pay \$1,600.00 to extend the tenancy for one more month. The Landlord further claimed that the Tenant then decided not to move out and deducted \$400.00 from his rent for January 2011 without authorization and continued to pay \$1,200.00. Consequently, the Landlord said the Tenant has rent arrears for January 2011 of \$400 and for February of \$400.00 which the Tenant has not paid.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will need to provide additional, corroborating evidence to satisfy the burden of proof. Consequently, the Landlord must show that there were rent arrears of \$800.00 as of February 16, 2011 that the Tenant failed to pay.

The Parties gave contradictory evidence as to whether there was a fixed term tenancy (as the Landlord alleged). However, both parties provided a copy of a rent receipt issued by the Landlord for the Tenant's February 2011 rent payment which states in part, "as per our agreement dating back to July 2010 where upon the tenancy is a month to month with a rental payment of \$1,200.00." I find that this evidence corroborates the Tenant's version of events and in the absence of any corroborating evidence from the Landlord (such as a tenancy agreement), I find that there is insufficient evidence that there was a fixed term tenancy. Consequently, I find that the tenancy was a month-to-month tenancy.

The Parties also gave contradictory evidence as to whether the Landlord imposed an illegal rent increase (as alleged by the Tenant) effective December 15, 2010 or whether the Tenant offered to pay the increased amount (as alleged by the Landlord). Section 43 of the Act says that a Landlord may impose a rent increase by serving the Tenant (3 months in advance) with an approved form of a Notice of Rent Increase for an amount that complies with the Regulations to the Act. Alternatively, a Tenant may agree to a rent increase but it must be in writing. I find that the Landlord did not give the Tenant a Notice of Rent Increase and did not obtain the Tenant's agreement in writing to a rent

increase. Consequently, I find that the rent increase that took effect on December 15, 2010 was of no force and effect and as a result, the Tenant's rent remains \$1,200.00 until such time as the Landlord takes the proper steps under the Act to increase it.

Both Parties agree that the Tenant paid \$1,600.00 for December 2010 rent and therefore I find that the Tenant was entitled pursuant to s. 43(5) of the Act to deduct an overpayment of \$400.00 from his rent for January 2011 (or to pay \$800.00). Both Parties also agree that the Tenant paid \$1,200.00 for February 2011 rent and as a result, I find that as of February 16, 2011, there were no rent arrears. I also make this finding having regard to the Landlord's signed receipt for February 2011 where he states in part, "signature of this receipt confirms Feb. 2011 rent paid in full with no balance owing." For all of the above-noted reasons, I find that there are no grounds for the 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 16, 2011 and the Tenant's application to cancel it is granted.

The Tenant also sought an Order that the Landlord comply with the Act by providing him with a copy of a tenancy agreement as required by s. 13 of the Act and to provide him with copies of receipts for rent payments made in cash as required by s. 26(2) of the Act. Based on the evidence of the Parties, I find that the Landlord has complied with s. 13 of the Act by providing the Tenant with rent receipts on February 24, 2011 (for December 2010, January 2011 and February 2011). However, I find that the Landlord has not provided the Tenant with a copy of a tenancy agreement. I find that this is not an appropriate case to order the Parties to enter into a written tenancy agreement as it is unclear if there are other terms that may be in dispute. To date, however, I find that the Parties have a month-to-month tenancy that commenced in August 2010 for the rental rate of \$1,200.00 due in advance on the 15th day of each month plus utilities (which were not specified). The standard terms (set out in Schedule 1 of the Regulations to the Act) also apply to the Parties' tenancy agreement pursuant to s. 12 of the Act.

Conclusion

The Tenant's application to cancel the 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 16, 2011 is granted and the tenancy will continue. 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 01, 2011.

Residential Tenancy Branch