



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, DRI, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and to dispute an additional rent increase.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

During the hearing the tenant identified that he thought the landlord had imposed an additional rent increase because the notice to end tenancy was for more than what the rent was. However, the landlord is claiming the tenant owed rent for more than one month, as such, the landlord had not imposed a rent increase and I amend the tenant's application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the rent for this month to month tenancy is \$600.00 per month. The parties disagree on the following components of the tenancy agreement:

1. The landlord believes the tenancy began in December 2010; the tenant states it started in April 2009;
2. The tenant states that rent is due on the 5th of each month; the landlord states it is due on the 1st of each month;
3. The tenant states he paid the landlord a security deposit of \$300.00 but the tenant states she does not have any security deposit from this tenant.

The landlord claims that the tenant did not pay the full rent for the month of February 2011; she states he paid only \$100.00 and that she issued the tenant a 1 Month Notice to End Tenancy in February when he did not pay the full rent. The tenant testified that

he had paid the full rent for February and the landlord did not issue a Notice to End Tenancy in February.

The tenant testified that the landlord has never provided receipts for rent even though he has always paid in cash. The landlord states that she always issues receipts but could not provide a reason why she had not entered any receipts into evidence.

The tenant acknowledged that he had not paid rent for March 2011 because he was told by the male landlord not to deal with the female landlord any longer and to pay the rent directly to the male landlord. He states that when he went to pay the rent the male landlord was out of the country, so he waited until the male landlord returned and then the landlords refused to accept the rent payment.

The landlord also asserts on the 10 Day Notice to End Tenancy that the tenant failed to pay utilities in the amount of \$312.00 following written demand on February 15, 2011. The landlord provided a copy of an invoice from the local cable provider for movies and other services, but did not provide a copy of a written demand letter requesting payment.

The tenant testified that the landlord upstairs and another rental unit in the basement all use the same cable and that he does not believe anyone in his rental unit ordered all the movies listed as some are being shown at the same time as other ones listed on the invoice. It was after this that the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities.

The tenant submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities that was issued on March 7, 2011 with an effective date of March 17, 2011 due to \$1,100.00 in unpaid rent and \$312.00 in unpaid utilities.

Analysis

As the landlord failed to provide any evidence of outstanding rent for February, 2011 or confirmation that it was this tenant that ordered any of the movies through the cable provider I find these are not grounds to end the tenancy.

As to the rent for the month of March 2011, I find the landlord prevented the tenant from paying the rent and the landlord cannot now rely upon the non-payment of rent to end the tenancy as it was the landlord who prevented the payment.

I order the tenant to pay March 2011 rent immediately to the female landlord and I order the landlord to accept the rental payment for March, 2011 when presented by the tenant. I further order the landlord to provide receipts to the tenant for all rent payments.

Conclusion

For the reasons noted above I cancel the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on March 7, 2011 and I find the tenancy to be in full force and effect.

As the tenant was successful in his application I find that he is entitled to recover the \$50.00 fee for filing his Application for Dispute Resolution from the landlord and I order the tenant may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: April 01, 2011.

Residential Tenancy Branch