



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing dealt with the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; request for Orders for compliance; and, recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions and to respond to the submissions of the other party.

The tenant confirmed receiving the landlords' evidence package on June 30, 2011 and having an opportunity to review the documents. Therefore, I have accepted the landlord's documents in making this decision.

I heard the tenant mailed his evidence package to the landlords on July 6, 2011 and the landlords confirmed receiving the package last night. I did not accept the tenant's evidence package in making this decision given the very late service upon the landlords; however, I provided the tenant full opportunity to provide verbal testimony and call witnesses.

Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary to issue orders for compliance with the Act, regulations or tenancy agreement?
3. Can the parties reach a mutual agreement to resolve their dispute?

Background and Evidence

I was provided the following consistent testimony from both of the parties. The tenancy commenced April 2009 under a verbal tenancy agreement. The tenant was required to pay rent of \$400.00 on the 1st day of every month for the first year and then \$550.00 per month thereafter. The landlords did not issue a Notice of Rent Increase when the rent was increased. The landlords receive rent in cash but has not issued receipts. The landlord personally served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent

(the Notice) on June 14, 2011. The Notice indicates the tenant failed to pay rent of \$2,300.00 as of June 1, 2011. The tenant disputed the Notice within the time limits required by the Act.

In the landlords' written submissions and by way of verbal testimony, the landlords submitted that the amount of unpaid rent appearing on the 10 Day Notice is comprised of unpaid rent for the following months:

January 2010	\$ 400.00
February 2010	400.00
March 2010 (\$400.00 – 200.00 payment)	200.00
April 2011 (\$550.00 – 350.00 payment)	200.00
May 2011	550.00
June 2011	<u>550.00</u>
Total	\$ 2,300.00

The landlords submitted that after serving the tenant with the Notice the tenant did not pay the outstanding rent. Nor has the tenant paid rent for July 2011. The landlords have issued another 10 Day Notice to reflect unpaid rent for July 2011 and requested I clarify the impact of today's decision upon the validity of the July 2011 Notice to End Tenancy.

The tenant acknowledged that he was short in his rent payments in early 2010 but did not believe he owed \$1,000.00 for those months. The tenant was also of the belief that his father had paid all or some of the outstanding rent from 2010 based upon discussions he had with his sister. I provided the tenant the opportunity to call his father as a witness; however, the tenant was unable to call his father during the hearing time.

The tenant testified that he has paid the balance of rent owed for April 2011 sometime after April 18 although he did not know the date exactly. The landlords submitted that they were out of town for much of the remainder of April 2011 and did not receive any rent from the tenant after the \$350.00 paid April 18, 2011.

The tenant testified that he paid the full amount of rent to the female landlord for May and June 2011 and \$300.00 towards July's rent. The tenant is preparing to dispute the 10 Day Notice he received in July 2011. The landlords denied such payments were received from the tenant. The landlords also submitted that in a letter dated June 16, 2011 they advised the tenant they would accept rent by cheque or money order.

The parties mutually agreed during the hearing that in order to avoid future disputes involving payment of rent the tenant shall provide the landlord with six months of post-dated cheques in the amount of \$400.00.

Analysis

In the absence of a written tenancy agreement and receipts for cash payments, this decision is based largely on verbal testimony as neither party has documentation to support their respective positions. Having heard from both parties, I make the following findings.

The Act requires landlords to prepare a written tenancy agreement that meets the requirements of the Act and regulations. Clearly, the landlords have violated the Act by not preparing a written tenancy agreement. The Act requires the landlord to issue receipts for cash payments received from a tenant. The landlords also violated the Act in this regard.

The Act also requires that a tenant pay rent when due even if the landlord has violated the Act, regulations or tenancy agreement unless the tenant has the legal right to withhold rent. The Act provides for specific circumstances when a tenant may withhold rent, including recovery of overpaid rent or authorization by the Director.

The amount of rent payable by a tenant is as provided by the tenancy agreement unless that amount has been changed in accordance with the Act. In order to be effective, any rent increase must be made by serving the tenant with a Notice of Rent Increase. In this case a Notice of Rent Increase was not served upon the tenant. Therefore, the rent payable by the tenant remains at \$400.00 per month.

Since it is undisputed the tenant paid \$550.00 from April 2010 through March 2011 I calculate the tenant has overpaid rent by \$1,800.00 for that time period and the tenant is entitled to recover that overpayment by deducting from rent otherwise payable.

With respect to the unpaid rent for January 2010 through March 2010 I accept the landlords' version of events over that of the tenant. The tenant acknowledged being short for those months and could not produce the person that may have paid the rent on his behalf as a witness during the hearing. Nor did the tenant obtain a written statement from that person in advance of this hearing.

With respect to the unpaid rent for April 2011 through June 2011 I accept the landlords' version of events over that of the tenant. The landlords provided a detailed account of

what transpired on which date yet I found the tenant's responses were vague and unclear.

In light of the above, I accept that the tenant failed to pay \$1,000.00 of rent for January through March 2010 and I accept that the tenant paid only \$350.00 in rent for the month of April 2011 and did not pay rent for May or June 2011.

Taking into account my earlier findings that the monthly rent is \$400.00 and the tenant has overpaid \$1,800.00 for April 2010 through March 2011 I calculate the tenant owed the landlords the following amount as of June 2011:

Unpaid rent – January 2010 through March 2010	\$1,000.00
Unpaid rent – April 2011 (\$400.00 – 350.00 payment)	50.00
Unpaid rent – May 2011	400.00
Unpaid rent – June 2011	400.00
Less: overpayment from April 2010 through March 2011	<u>(1,800.00)</u>
Balance owed as of June 2011	\$ 50.00

As I have found merit to the tenant's dispute of this notice which could have been avoided with compliance by the landlords I award the \$50.00 filing fee to the tenant. In light of the above award, the balance owed to the landlords is reduced to nil and I **cancel the 10 Day Notice issued June 14, 2011.**

As the landlords requested clarity of the Notice issued July 4, 2011 and because the tenant indicated he was preparing to dispute the July Notice, I make the following finding. The Notice issued by the landlords July 4, 2011 is calculated based upon an illegal rent increase and it is invalid. Therefore, I **cancel the Notice issued July 4, 2011.**

The landlords are at liberty to serve another 10 Day Notice reflecting a monthly rent of \$400.00 if they are of the position the tenant has not paid rent for July 2011. Upon receipt of another 10 Day notice, the tenant must either pay the amount indicated on the Notice to nullify it or dispute the Notice within five days of receiving the Notice. Failure to do one of these two options will end the tenancy on the effective date of the Notice.

In recognition of the mutual agreement reached between the parties during the hearing, I **order the tenant to provide the landlords with six months of post-dated cheques within one week of the date of decision.** The cheques must be for \$400.00 and be dated for the 1st of every month in order to comply with the tenancy agreement.

Conclusion

The Notices to End Tenancy issued June 14, 2011 and July 4, 2011 have been cancelled. The tenant's monthly rent is set at \$400.00 per month until such time it legally changes. The tenant is ordered to provide the landlord's with six months of post-dated cheques within one week of the date of this decision.

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: July 08, 2011.

Residential Tenancy Branch