



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent.

Although there is one tenant and one landlord listed on the application, there are two tenants and two landlords. The male landlord did not appear at the hearing and both tenants attended. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in documentary form, and to cross examine each other.

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

Issue(s) to be Decided

Is there a basis to cancel the Notice to End Tenancy for Unpaid Rent?

Background and Evidence

There is no written tenancy agreement, but I heard testimony that this month to month tenancy began on May 1, 2011, monthly rent is \$725.00 and that a security deposit of \$362.50 was paid at the start of the tenancy. The parties agreed that the utilities were included with rent.

Pursuant to the rules of procedure for the Residential Tenancy Act (the "Act"), the landlord proceeded first in the hearing and testified as to why the tenants had been served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

It is noted that the parties each submitted a different copy of the Notice, with the tenant submitting a Notice dated June 16, 2011, with an effective move out date of June 29, 2011, listing \$750.00 in unpaid rent as of June 1, 2011, and listing unpaid utilities of \$60.00, with the notation that this amount was included on rent, and the landlord submitting a Notice dated June 14, 2011, with an effective move out date of June 27, 2011, listing \$750.00 in unpaid rent as of June 1, 2011, and listing unpaid utilities of \$60.00, with the notation that \$60.00 is included with the rent.

The landlord could provide no clear testimony as to why there were two different Notices, stating that the one she submitted was perhaps a copy made from her recollection of the Notice received by the tenants.

In satisfaction of rent, the landlords were to receive two rent payments of \$362.50 from the Ministry of Social Services (the "Ministry") on behalf of each tenant via direct deposit into the landlords' account.

The landlord stated that she received nothing for rent in June or July and that her total payments received were \$1,141.50.

Upon query the landlord could provide no testimony or accounting of payments, saying that her bookkeeping was "sloppy," and that the landlords were "kind of pathetic" in keeping up with money paid for the rental unit.

The landlord stated that she could not obtain receipts from the Ministry for the payments she has received.

In response, the male tenant testified that he confirmed with the Ministry that the landlords' account had received the full rent for May and only half a month for June as his portion of the rent, \$362.50, was mailed directly to the tenant that month, for some unknown reason. The tenant provided no written confirmation of this statement.

The tenant stated that he had a verbal, handshake agreement with the male landlord, who was not in attendance at the hearing, that the tenants would remove garbage and clean the upper rental unit, in exchange for the other portion of rent, \$362.50. The tenant stated that he estimated the costs of the cleaning to be \$100.00 for dump cost, truck loads of \$100.00, labour at \$180.00, as it took 3 people to clean on an expedited basis, and gasoline for \$60.00. The tenant stated that he turned all the receipts over to the landlord.

The tenant stated that the male landlord wanted to charge a pet deposit after the tenants moved in, and considered the \$362.50 payment received in June on behalf of the female tenant to be a pet deposit instead of rent. The tenant explained that the Ministry does not pay for pet deposits.

In response, the landlord denied having any agreement with the tenants to clean the upper unit, and that she paid the female tenant in cash on an hourly basis. As to the garbage, the landlord explained that she told the tenants they could have anything in the garbage bags, as the previous tenant had left so many belongings, and was surprised to see the garbage bags gone.

Analysis

Based on the foregoing affirmed testimony and evidence, and on a balance of probabilities, I find as follows:

As the landlord was informed during the hearing it is the landlord's burden to provide sufficient information to prove the tenant owed unpaid rent at the time the Notice was issued. The landlord provided no evidence of rent payments or an accounting system, such as a tenant ledger sheet or bank records, which would substantiate that the tenants had not paid rent and when paid, in what amount.

I was unpersuaded by the tenants' testimony and evidence surrounding a verbal agreement to clean the upper unit; rather I find that the landlord provided deficient and insufficient testimony and evidence to prove that the tenants owed \$725.00 in unpaid rent when the Notice was issued. Further, I have contradictory Notices, with differing dates on the Notices. I do not find the tenants were issued two Notices; rather the landlord provided inconclusive testimony as to why there were two different Notices in existence.

Based upon the above, I therefore find the landlord has not proven that either Notice to End Tenancy was valid and that due to the contradictory Notices in evidence, neither Notice is enforceable.

Conclusion

I therefore allow the tenant's Application for Dispute Resolution, and **I order that the Notices to End Tenancy, dated June 16, 2011, supplied by the tenant, and the other Notice, dated June 14, 2011, supplied by the landlord, are cancelled and are of no force or effect**, with the effect that this tenancy continues until it may legally end.

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 18, 2011.

Residential Tenancy Branch