



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has a valid 10 Day Notice to End Tenancy (the Notice) been issued and served in accordance with sections 52 and 46 of the *Residential Tenancy Act*?
2. If so, has the Tenant met the burden of proof to have the Notice cancelled pursuant to section 46 of the *Residential Tenancy Act*?
3. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain monetary compensation as a result of that breach?

Background and Evidence

In the course of this proceeding and upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together in today's hearing. Therefore, I will deal with the Tenant's request to cancel the Landlord's Notice to End Tenancy for unpaid rent, and I adjourn the balance of the Tenant's claim to a future reconvened hearing. Notices of reconvened hearing will accompany this interim decision.

The parties agreed that the Tenant has occupied this rental unit since approximately December 31, 2005 and that on December 19, 2007 the Tenant entered into a written tenancy agreement for rent payable on the first of each month in the amount of \$625.00. Then in November 2010 the Landlords entered into an agreement for the Ministry of Social Development to pay rent directly to the Landlord on behalf of the Tenant's roommate and the Tenant began to pay \$300.00 per month rent. The first payment received from the Ministry for the roommate was received by the Landlords on November 19, 2011. The roommate failed to pay rent for January, February, March, and April 2011. The Landlords' Agent evicted the roommate and she vacated the property as of April 5, 2011. Rent for the entire unit was increased as of August 1, 2011 to \$750.00 per month.

The Tenant stated he initially thought he had to pay the Landlord for the roommate's rental arrears so he paid an additional \$100.00 on May 1, 2011. After he sought advice from the *Residential Tenancy Branch* the Tenant went back to paying the regular rent of \$700.00 starting June 1, 2011. The Tenant's rent is currently paid in full.

The Landlords advised their Agent attempted to collect the roommate's rental arrears from the Tenant and when that failed they issued him a 10 Day Notice dated October 18, 2011 for unpaid rent of \$1,300.00 that was due October 27, 2011. The 1,300.00 is comprised of unpaid rent owed by the roommate who was occupying the rental unit based on her intent to rent from through the Ministry of Social Development.

Analysis

I have adjourned the Tenant's claim for monetary compensation to a future reconvened hearing. Notice of reconvened hearing will accompany this interim decision.

After careful review of the evidence before me I find the 10 Day Notice to End Tenancy issued October 18, 2011 to be invalid as the Landlords are attempting to end this tenancy based on unpaid rent that is due under a separate tenancy agreement.

The evidence supports that the Tenant has overpaid his May 1, 2011, rent by \$100.00 as the Landlords' Agent attempted to collect rental arrears from a different tenancy. Therefore I find the Tenant is entitled to reimbursement of the \$100.00 overpayment and he may deduct this overpayment from his future rent payments.

The Tenant was advised that his evidence pertaining to his monetary claim must be served upon and received by the Landlords and the *Residential Tenancy Act* no later

than November 19, 2011. The Tenant was further advised that no further amendments will be granted to his current application that was received November 3, 2011.

The Landlords were advised to have their evidence served upon and deemed received by the Tenant and the *Residential Tenancy Branch* no later than November 26, 2011.

Conclusion

The 10 Day Notice to End Tenancy for unpaid rent issued October 18, 2011 is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct the one time award of \$100.00 from his next rent payment.

Notices of reconvened hearing will be included with this interim 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: November 14, 2011.

Residential Tenancy Branch