



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 an Application for Dispute Resolution by the tenants to set aside a 10 Day Notice to End Tenancy for unpaid rent.

The tenants testified that they served copies of the Application for Dispute Resolution, Notice of Hearing and evidence on the landlord via personal service. I find that the landlord was duly served. However, the landlord did not appear at the hearing.

The tenants gave affirmed evidence and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submission to me.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence

The tenant (A.S) testified that tenancy began on November 1, 2010. Rent in the amount of \$1,440.00 per month was payable on the first of each month.

The tenant (A.S) testified that on November 1, 2010, they did a walk through the rental unit with the landlord and noted many deficiencies in the rental unit. The landlord and tenants completed a move-in inspection report, listing the repairs that the landlord would complete at the start of tenancy. Filed into evidence is a copy of the move-in inspection report.

The tenant (A.S) further testified that the deficiencies had not been complete in a timely manner, and in May 2011, there was an agreement made with the landlord to reduce the monthly rent by \$400.00 until all deficiencies were complete.

The tenants submit into evidence a document dated May 20, 2011, titled Tenant File Change, and this document says that the tenants were promised to a rent reduction by

\$400.00 each month until all of the deficiencies are fixed. This is signed by an agent for the landlord.

The tenant (A.S) further testified that after this agreement the landlord continued to take the full amount of the rent from their bank account. Therefore, they cancelled the landlords authority to use the direct withdraw method and issued cheques for rent in the reduced amount.

The tenant (B.H) testified that the landlord told them that they are not honouring the agreement, the landlord indicated that the person who made the agreement with them does not have the authority to make decisions and they are now in arrears for \$1,800.00.

The tenant (B.H) testified that they were served with the notice to end tenancy for the amount of \$1,950.00, \$1,800.00 for the unauthorized rent reduction, and \$150.00 in fees for cancelling the direct payments.

The tenant (B.H) testified that the landlord was charged a fee of \$150.00 by the bank for submitting the direct withdrawal cancellation form late, and they were passing the fee on to the tenant. Copy of the cancellation form completed by the tenant and landlord has been filed into evidence.

Both tenants testified that they have paid all rent owed to the landlord, and they have filed into evidence their bank records that show monthly deduction in the amount of \$1,040.00 for rent paid to the landlord.

Analysis

Based on the above uncontradicted testimony and documentary evidence, I find as follows.

I find that the landlord is obligated to honour the Tenant File Change issued in May of 2011, as the definition of landlord in the Act states, "in relation to a rental unit a person who exercises powers and performs duties under this Act, the tenancy agreement or a service agreement".

The agent for the landlord that issued the Tenant File Change also signed the move-in inspection report, and issued the notice to end tenancy. They are clearly acting on behalf of the landlord and exercise powers under the Act.

I find that the notice to end tenancy was not issued in accordance with the Act, as the tenants have provided proof that all rent has been paid to the landlord and the landlord has filed no evidence to the contrary.

I further find that a notice to end tenancy cannot be issued for fees and if the landlord fails to process paperwork in a timely manner the tenant is not responsible for those costs.

I therefore, cancel the notice to end tenancy and the tenancy will continue until ended in accordance with the Act.

I grant the tenant's application to amend their application to recover the cost of the filing fee and as the tenants were successful in their application they are entitled to recover those filing fees.

Conclusion

I order that the notice to end tenancy is cancelled and tenancy will continue until ended in accordance with the Act.

I further order that the tenants are entitled to a monetary order in the amount of \$50.00 for cost of the filing as they were successful with their application. The tenants can deduct \$50.00 from future rent payable to the landlord.

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 03, 2011.

Residential Tenancy Branch