



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC and FF
Tenants: CNR and OLC

This hearing convened on applications by both the landlord and the tenants.

By application of December 14, 2011, the landlord sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on December 2, 2011. The landlord also sought a Monetary Order for the unpaid rent, and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of December 19, 2011, the tenants sought to have the Notice to End Tenancy set aside and an order that the landlord comply with the rental agreement.

Issue(s) to be Decided

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether there are grounds to set the Notice to End Tenancy aside and whether an order for landlord compliance with the rental agreement is in order.

Background and Evidence

This tenancy began on February 1, 2008. Rent is \$830 per month and the landlord holds a security deposit of \$415 paid on or about January 31, 2008.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of December 2, 2011 had been served after the tenants had paid only \$200 of the rent due on December 2, 2011. He stated that the tenants had paid the \$630 balance on December 14, 2011 when he served them with the Notice of Hearing.

The tenant gave evidence that for the full four years of the tenancy, the landlord has accepted the rent in two instalments and only recently has changed to demand full payment at the first of the month. The landlord's agent, who is relatively new to his position, stated that he had given the tenants verbal warning in November 2011 that future rent would have to be paid on the first day of each month.

The parties concurred that the full rent for January was paid on January 2, 2012 and the tenant stated that she understands and accepts that rent is due on the first, and in future, will be paid on the first.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it as the tenants have done in this matter.

While neither party submitted a copy of the rental agreement, I accept that it requires rent to be paid on the first day of the month. However, I find that the rent due date is a material term of the rental agreement. As with any material term, its materiality diminishes over time if it is not upheld.

In the present matter, I find that having accepted split rent payments for nearly four years, the landlord was obliged to provide the tenants with some reasonable written notice that the long established practice would be changed.

I find that the landlord did not give the tenants adequate written notice of the change in practice and, therefore, I am setting the Notice to End Tenancy of December 2, 2011 aside and dismiss the landlord's application.

In so finding, I also find that by the Notice to End Tenancy and the prior verbal notice, the tenants have now been given fair notice that rent must be paid on the first day of the month and they have now adjusted their payment schedule to meet that term of the rental agreement.

Conclusion

The Notice to End Tenancy of December 2, 2011 is set aside and the tenancy continues with the rent due date now re-established as the first day of the month.

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: January 04, 2012.

Residential Tenancy Branch