



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel the notice to End Tenancy for unpaid rent; an Order for the landlord to comply with the *Residential Tenancy Act (Act)* and to recover the filing fee from the landlord for the cost of this application.

One of the tenants and the landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the landlord's agent in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End tenancy cancelled?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

Both parties agree that this month to month tenancy started on April 01, 2011. New tenancy agreements were put in place on September 01, 2011. Rent for this unit is \$750.00 per month and is due on the 15th day of each month.

The landlord's agent testifies that the tenants were served with a 10 Day Notice to End Tenancy on October 13, 2011 in person due to \$1,500.00 in unpaid rent. This Notice declares that the unpaid rent was due on October 01, 2011 and gives October 14, 2011 as the date the tenants' must vacate the rental unit.

The landlord's agent testifies the tenants wanted to change the rent date to the first of each month and wanted to pay 50% of the rent on the first day of the month and 50% of the rent on the 15th day of each month. The landlord's agent states they just want the rent paid by the tenants.

The tenant testifies that these agents took over on September 01, 2011 the tenant states a female agent asked them to go into the office and sign new tenancy agreements. The tenant states when they went to the office they were made to sign separate tenancy agreements even though they told the landlords agents that they rented the unit together. The tenant states this female agent also told them they must pay their rent on the first day of each month despite the tenancy agreements stating rent is due on the 15th of each month. The tenant testifies all their dealings were with the female agent and not the agent attending this hearing.

The tenant testifies that they called the female agent later and told her that they would be willing to change their payment date but they set out a proposal to implement this change over the next few months. The tenant testifies the female agent agreed to this proposal. The tenant states her co-tenant went to the agent's office on September 15, 2011 as normal to pay the new proposed rent but no one was there. The tenant states she called the female agent and left a message on her phone saying that her co-tenant was at the office to pay the rent. The tenant states she also called the landlord and he told her not to worry about it. The tenant states she did not hear from the landlord's agent until one of them came to their unit on October 13, 2011 with the 10 Day Notice. The tenant states this agent told her that they never pay their rent on time and they have to track them down for it each month. The tenant states they have always paid their rent on time and she took exception to these accusations. The tenant testifies she attempted to explain to him what had happened and tried to give him the rent but he refused to take it.

The tenant states she called the female agent again on October 15, 2011 and told her what happened. The tenant states the agent agreed her co-tenant comes into the office and pays the rent on time each month. The tenant states she again made a proposal about the change of rent day and states the agent said she would talk to the landlord and get back to her on this matter. The tenant states the female agent told the tenant that she did not care what date they were supposed to pay rent on, the agent wanted it on the first of each month as it was inconvenient to them to have rent paid on the 15th of the month. The tenant states they attempted to pay their rent on September 15, September 17 and on October 13, 2011. The tenant states this agent never returned her call. The tenant states she then filled her application to dispute the Notice.

The landlord's agent testifies that he did not refuse to take the rent on October 13, 2011. The landlord's agent also states someone is always normally in the office. The agent states when he served the tenant with the 10 Day Notice she was abusive towards him and denied owing any rent.

The tenant denies being abusive towards the landlord's agent. The tenant states the agent told her that they did not want the rent but just wanted them out of the unit. The tenant seeks an Order for the landlord to comply with the *Act* with regards to the date that the rent is due in accordance with their tenancy agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the tenants application to cancel the Notice to End Tenancy; in deciding this matter I must first determine if rent is outstanding and if the tenants argument that they attempted to pay rent on three occasions is likely. I have considered the arguments put forward by both parties and find the tenant has shown that they have paid rent regularly on the 15th of each month, consequently as the landlords agent has not raised any arguments that the tenants did not attempt to pay rent on September 15 and September 17, 2011 except to say that someone is normally in the office, I find the tenants

arguments that they did attempt to pay rent on these days to be likely considering the evidence presented showing attempts to contact the landlords agent and the landlord on these dates. The tenant also argues that the amount of rent outstanding would only be \$750.00 not \$1,500.00 was stated on the 10 Day Notice.

Therefore it is my decision that the tenants did attempt to pay their rent in accordance to their tenancy agreement and the landlord's agents were not available to accept this on September 15 and 17, 2011.

The tenant also argues that the landlord's agent refused to accept this rent when it was offered to him on October 13, 2011. The landlord's agent argues that the tenant did not try to pay the rent on October 13, 2011. I am unable to determine whether or not the tenant did offer to pay the outstanding rent of \$750.00 to the landlord's agent as the testimony of the parties contradicts each other. However as the burden of proof falls to the landlord when they have served a 10 Day Notice to the tenants to prove that rent is outstanding according to the 10 Day Notice; I find the landlord has not met the burden of proof that \$1,500.00 is owed as of October 01, 2011. I find the details on the 10 Day Notice are incorrect as to the amount owed by the tenants, the date the amount is owed and the date to vacate the rental unit.

Consequently, it is my decision that the 10 Day Notice will not be upheld due to the inaccuracies contained within it and the fact that the tenants did attempt to pay rent on at least two occasions and the landlord's agent did not return the tenants calls regarding collecting this rent.

With regards to the tenants application for an Order for the landlord to comply with the Act; I find the tenancy agreement in place dated March 30, 2011 and signed by both tenants and the landlord states rent of \$750.00 is due on the 15th day of each month. The second tenancy agreement in place for the female tenant is also dated March 30, 2011 and shows rent of \$750.00 due on the 15th of each month but is unsigned by the landlord's agents. Consequently, it is my decision that the original tenancy agreement is the one that is upheld and therefore unless both parties agree in writing to alter the terms of this tenancy

agreement then rent is due and payable on the 15th day of each month and the landlord must not alter this payment date unless it is agreed by the tenants. I further find the landlord's agents attempts to change the date they wanted rent paid to be unenforceable as this has not been put in writing to the tenants for their agreement.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for Cause dated October 13, 2011 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover their **\$50.00** filing fee for this proceeding pursuant to s. 7291) of the *Act* and may deduct that amount from their next rent payment when it is due and payable to the landlord.

I Order the landlord to comply with s. 14 (1) and s. 14(2) of the Act with regards to changes to the tenancy agreement.

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