



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF / OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the tenants for cancellation of a notice to end tenancy for unpaid rent / and recovery of the filing fee; ii) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for the tenancy which began in this particular unit on February 1, 2011. Monthly rent of \$1,300.00 is payable in advance on the first day of each month, and a security deposit of \$550.00 was carried over from tenancy in a previous rental unit owned by this landlord.

An earlier decision dated January 27, 2012 was issued in a dispute between these parties (file # 785939). In that decision the dispute resolution officer found the effective date of a 2 month notice to end tenancy for landlord's use of property is March 31, 2012, as opposed to the date shown on the notice which is February 29, 2012. The dispute resolution officer found that the "self correct" for the effective date arises out of the tenant's receipt of the notice on January 5, 2012.

Following issuance of the above decision, the landlord issued a 10 day notice to end tenancy for unpaid rent for January dated January 31, 2012. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted in evidence. Thereafter, on February 8, 2012 the tenants filed an application to dispute the notice. The parties agree that rent is paid in full for February 2012.

The tenants take the position that on January 13, 2011 a verbal agreement was entered into with the landlord, pursuant to which January's rent would be waived. For his part, the landlord testified that he had not entered into any such verbal agreement with the tenants. The tenant claims that the agreement reflects the landlord's acknowledgement of certain things which are set out in writing in an "Agreement." A copy of the written "Agreement" is included in evidence. However, while the "Agreement" bears the tenant's signature, it does not bear the signature of the landlord. Also submitted into evidence is an "Expanded (but not exhaustive) Itemization Pertaining to Feb 13, 2012 Agreement" between the parties which was authored by the tenant.

While the parties explored potential resolution of the dispute during the hearing, a settlement was not achieved.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I find that the stalemate over payment of rent for January 2012 arises partly out of the "perfect storm" resulting from a number of things including, but not necessarily limited to, the landlord's view that the 2 month notice had been properly served such that the correct effective date for end of tenancy was February 29, 2012; the closing date for sale of the landlord's property which was also February 29, 2012; the tenant's application to dispute the 2 month notice; the finding that the effective date of the 2 month notice was not February 29, 2012 but, rather, March 31, 2012; and understandings / misunderstandings the parties may have had related to provisions set out in section 51 of the Act which speaks to **Tenant's compensation: section 49 notice**.

As to discussions and understandings around consideration that might be extended to the tenant by the landlord, which are related to all manner of things included in the "Agreement" and the "Expanded (but not exhaustive) Itemization Pertaining to Feb. 2012 Agreement," I find there is insufficient evidence that a conclusive agreement was ever reached between the parties. As previously noted, the "Agreement" does not bear the landlord's signature. In short, I find on a balance of probabilities that the parties did not get beyond wrangling over a potential agreement pertaining to whether or not rent would be payable for January 2012, and the matter remained unresolved up to and including the date of the hearing on January 27, 2012.

Further to the "perfect storm," as above, I find that a fair and just resolution of the dispute is not achieved by granting an order of possession in favour of the landlord, pursuant to the landlord's issuance on January 31, 2012, of a 10 day notice to end tenancy for unpaid rent for January 2012. Accordingly, the landlord's 10 day notice is

hereby set aside. Following from the earlier finding that the 2 month notice has an effective date of March 31, 2012, pursuant to section 51 of the Act I find that the tenant is entitled to receive from the landlord "the equivalent of one month's rent payable under the tenancy agreement." I hereby order that this entitlement be implemented by way of waiving of rent for March 2012 in the amount of \$1,300.00.

As I find there is insufficient evidence of an agreement between the parties concerning waiving of rent for January 2012, I find that the landlord has established entitlement to payment of rent for that month in the full amount of \$1,300.00, and I hereby grant the landlord a monetary order to that effect.

As for the disposition of the security deposit, the parties are encouraged to attempt to resolve that directly between them at the end of tenancy. In this regard, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

As neither party has fully achieved the outcome(s) sought, their respective applications to recover the filing fee are hereby dismissed.

Conclusion

The landlord's 10 day notice to end tenancy is hereby set aside. Tenancy continues pursuant to the landlord's 2 month notice to end tenancy, with the self corrected date for end of tenancy being March 31, 2012.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,300.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

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: February 28, 2012.

Residential Tenancy Branch