



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, O, FF, SS

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy, and a request to dispute an additional rent increase. The applicants are also requesting recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- They are disputing a Notice to End Tenancy that they received by e-mail because they believe it is not in the required form.
- They have never received a Notice to End Tenancy in the proper form, however the landlord sent them an e-mail stating they would be ending the tenancy and a written notice would be forwarded to them by mail.
- They have never received the written copy by mail.
- The landlord also wants to raise the rent by having them pay their own electrical utility, and the electrical utility at this point is included in the rent and therefore they believe that that is an illegal rent increase.
- As yet the landlords have not increase the rent or required that they pay the electrical utility.

The landlords testified that:

- They did send the tenants an e-mail stating they were ending the tenancy, however they also sent a proper 2 month Notice to End Tenancy, on the required form, by regular mail that was mailed on December 5, 2011.
- When speaking to the female tenant they asked if she had received the mail and the tenant stated that she had.
- They therefore believe that the tenants have been properly served with the written Notice to End Tenancy in the required form and since there dispute of that notice was not filed within the required time limit, they feel the dispute should be dismissed.
- They did want the tenant's to take over paying utilities to the rental unit, however at this point they have not required the tenants to do so and no rent increase has been given.

In response to the landlord's testimony the tenant testified that:

- When his wife was asked if she received the mail with the Notice to End Tenancy, she thought the landlord was referring to e-mail not regular mail and that is why she told the landlord she had received it.
- He reiterates that they have never received the written Notice to End Tenancy on the required form.

Analysis

It is my finding that the landlords have not met the burden of proving that the tenants have been served with the Notice to End Tenancy in the required form.

The landlord testified that it was sent by regular mail; however the tenant testified that they have never received a Notice to End Tenancy by mail, only by e-mail and not in the required form.

The burden of proving that the Notice to End Tenancy has been served lies with the landlord and in this case, since the notice was not sent by registered mail, there is no way of proving that the tenants ever received it.

Conclusion

Therefore it is my decision that this tenancy continues, and if the landlords still want to end this tenancy they must serve the tenant with a proper Notice to End Tenancy in the required form.

I further order that the landlords bear the \$50.00 cost of the filing fee paid by the tenants, and therefore the tenants may make a one-time \$50.00 deduction from future rent payable.

As far as the rent increase is concerned, at this point the tenants have not been served with an illegal rent increase and therefore there is nothing for me to deal with.

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: March 26, 2012.

Residential Tenancy Branch