



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC, O, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking orders to cancel a ten day Notice to End Tenancy for unpaid rent, a one month Notice to End Tenancy for alleged cause, for an order for the Landlord to comply with the Act, to allow the Tenants more time to make the Application, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Landlord submitted evidence to the Tenants and the Branch less than five business days before the hearing. Under the rules of procedure, evidence must be provided to both the other party and the Branch five business days prior to the hearing. I have not allowed this evidence as I find it is inadmissible.

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Although the Tenants requested more time to make this Application, it was unnecessary, as I find the Tenants have applied on time to dispute these two Notices.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent be cancelled?

Should the one month Notice to End Tenancy for alleged cause be cancelled?

Should the Landlord be ordered to comply with the Act?

Background and Evidence

Pursuant to section 11.1 of the rules of procedure, the Landlord presented their case first regarding the two Notices to End Tenancy in dispute here.

The witness for the Landlord testified he served the Tenants with a one month Notice to End Tenancy for cause, on March 28, 2012, by leaving a copy in the Tenants' mailbox (the "One Month Notice").

The One Month Notice alleged the Tenants were repeatedly late paying rent, among other allegations. The Landlord did not want to focus on these other allegations during this hearing.

The witness for the Landlord testified that the Tenants were late paying rent every month for the past few months. He testified that in 2011, they paid the rent on November 5 and on December 5. He testified that in 2012, the Tenants paid the rent on January 6, February 5, and March 5. He testified that the tenancy agreement requires the Tenants to pay the rent on the first day of each month.

The witness further testified that on April 2, 2012, the Tenants were served with a 10 day Notice to End Tenancy for unpaid rent in the amount of \$1,450.00, by placing it in the mailbox of the rental unit (the "10 day Notice").

The witness alleges that the Tenants had failed to pay \$225.00 of the security deposit when the tenancy began in November of 2011. He testified the Tenants had paid \$500.00 of the deposit but still owe \$225.00, as the monthly rent is \$1,450.00.

The witness also alleges that the Tenants owe \$1,155.00 in utilities between November 2011 and April of 2012. I note the parties had been to one prior dispute resolution hearing dealing with the utilities.

In reply to the One Month Notice issue, the Tenants explained they have always paid the Landlord the rent on the fifth day of the month as part of a verbal agreement they have with him.

They testified this is due to their pay cycles. They testified that they used to live in the basement suite of the rental unit and then moved to the upper portion of the rental unit, and the Landlord has always accepted the rent paid on this day even when they lived in the rental unit downstairs

The Tenants further testified that the Landlord did not do a new tenancy agreement when they changed rental units. They allege the Landlord falsified the tenancy agreement provided in evidence as the agreement tendered was for the previous tenancy. However, I note the evidence submitted which contained the tenancy agreement was not admissible, as explained above.

In reply to the 10 day Notice, the Tenants testified they paid the Landlord the rent on April 5, 2012, in full.

The Tenants further testified that they had no problems with the Landlord until he attempted to have them pay 70% of the utility bill, which they did not agree to pay. The Tenants allege the Landlord is attempting to have them pay for the installation of a meter which monitors the electricity.

The Tenants allege the Landlord is harassing them with multiple notices to end tenancy, which are not valid. They allege the Landlord sent them 13 different notices all at once, contained in the late evidence package. They testified they were never served with these until just before the hearing.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the One Month Notice should be cancelled. There is insufficient evidence before me that the parties agreed, in writing, that rent was due on the first day of the month. The Landlord's evidence indicates a long pattern of accepting rent on the fifth day of the month. The Landlord has insufficient evidence to prove the Tenants were required to pay rent on the first day of the month, or that the Landlord had issued the Tenants any previous Notice for late payment of rent. Therefore, I am unable to find that the Tenants have been repeatedly late paying rent. I order that the One Month Notice is cancelled and is of no force or effect.

I find that the 10 day Notice was cancelled by operation of the law. The Tenants paid the rent within five days of being served with this Notice. Therefore, the Notice was cancelled when the Tenants paid all the rent due.

Therefore, this tenancy will continue until ended in accordance with the Act.

I make no findings on the issues of the security deposit and the utilities, as there was insufficient evidence on these.

Having allowed their claim and dismissed the two Notices to End Tenancy, I find the Tenants are entitled to recover the filing fee for the Application. The Tenants may deduct \$50.00 from one month of rent to recover the filing fee for the Application.

Both parties are cautioned that they must follow the Act and regulations in dealing with this tenancy. I have provided each with a copy of a guidebook to residential tenancies to assist them.

This decision is final and binding on the parties, except as provided under the Act, and 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: April 23, 2012.

Residential Tenancy Branch