



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This matter dealt with an application by the Tenant to recover an alleged overpayment of rent as well as the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to recover an alleged overpayment of rent?

Background and Evidence

This tenancy started on February 1, 2011 as a one year fixed term tenancy that continued on its expiry as a month-to-month tenancy. The Tenant vacated the rental unit on March 31, 2012. Rent was \$1,000.00 per month payable in advance on the 1st day of each month.

The Tenant claims that she discovered carpenter ants in the rental unit and reported it to the Landlords on March 2, 2012. The Landlords claim the Tenant first reported the ants on March 4, 2012. The Parties agree that the Landlords authorized the Tenant to have an exterminator treat the property on March 5 and 7, 2012. The Tenant said she could not live in the rental unit under those conditions so she stayed in a hotel on March 7 and 8, 2012 and with family members on March 9 and 10, 2012. The Tenant said when she returned to the rental unit there were still a large number of carpenter ants entering through the wall in her daughter's bedroom. Consequently, the Tenant said she contacted the Landlord, J.S., on March 12, 2012 and advised her that she would be moving out at the end of the month. The Tenant said she continued to reside in the rental unit until March 24, 2012 when she found a new residence.

The Tenant claims that during her telephone conversation with J.S. on March 12, 2012, she apologized for not giving the Landlords a full month notice but offered to pay for 12 days rent for April because that was the number of days she was short on her notice. The Tenant said the J.S. replied, "okay" which she believed meant that the Landlords agreed that she could end the tenancy on those terms. The Landlord, J.S., denied that the Tenant offered to pay for 12 days rent for April 2012 and claimed instead that the

Tenant told her that she realized she had not giving a full month's notice and would have to compensate the Landlords for it. The Tenant gave the Landlords a written notice to end the tenancy dated March 31, 2012 however it did not state an effective date (or when the tenancy would be ending). The Parties agree that the Tenant delivered this document to the Landlords on April 2, 2012.

The Tenant said she contacted the Landlords on March 30, 2012 to arrange a move out inspection for the following day but they were out of town and one was arranged for April 2, 2012 at 6:00 p.m. The Tenant said she discovered the morning of April 2, 2012 that the Landlords had cashed her rent cheque for April 2012 and contacted the Landlords. The Tenant said the Landlord, J.S., denied that she had agreed the Tenant did not have to pay rent for April 2012. The Tenant said she cancelled the move out inspection scheduled for later that day. The Parties agree that the Tenant's fiancé also advised the Landlords that day that he would be moving his and the Tenants furnishings back into the rental unit if they were going to have to pay rent for April 2012 and the Landlords agreed that they could.

The Landlords said they cashed the Tenant's rent cheque because they believed she was still responsible for paying the rent for April 2012. The Parties completed a move out inspection on April 11, 2012 and the rental unit was re-rented for May 2012.

Analysis

Section 45(1) of the Act states that a Tenant must give a Landlord *one calendar month's notice in writing* in order to end a month-to-month or periodic tenancy. The only exception to this rule, is s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given written notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

The Tenant claimed that due to the carpenter ant infestation, the rental unit was not fit to live in. In support of this assertion, the Tenant provided a copy of a photograph that she said showed approximately 40 ants in the area near the baseboard heater in her daughter's room. The Tenant also claimed that following one treatment, her fiancé saw approximately 200 ants emerge from the same area. The Tenant further claimed that she found ants in her and her daughter's bed however she provided no photographic evidence of that. The Tenant claimed that the exterminator advised her that there was an ant nest outside the wall next to her daughter's bedroom and that it would take some time before the treatments would be effective to eradicate all of the ants. The Landlords admitted that they were advised by an exterminator that there would be a number of ants coming into the rental unit following the first treatment and that periodic treatments would be required thereafter. The Landlord, M.S., claimed that when he inspected the rental unit on March 8, 2012 he found only 2 dead ants. The Parties agree that a more extensive treatment was done on March 17, 2012. The Landlords said a further

treatment was done shortly after new tenants moved in and that there have been no reports of ants since that time.

While I find that the carpenter ant infestation was a nuisance and stressful to the Tenant, I also find that there is insufficient evidence to conclude that this rendered the rental unit unlivable. I also find that the Tenant was not entitled to end the tenancy early under s. 45(3) of the Act because she did not give the Landlords written notice that she would end the tenancy if they failed to resolve the ant problem. The Tenant admitted that the Landlords acted quickly to address the problem once she reported it to them however she argued that the Landlords' attempts between March 5 and 12, 2012 were unsuccessful. I find that one week was not a reasonable period of time to expect the Landlords to have resolved the problem.

The Tenant also argued that the Landlords agreed that she could end the tenancy without giving the required one (calendar) month's notice provided that she paid 12 days rent for April. The Landlords denied this and claimed that the Tenant said she would compensate them due to her short notice. As the Tenant has the burden of proof on this issue, she must show on a balance of probabilities that there was an agreement as she alleges. The Tenant admitted that there were no witnesses to her conversation with J.S. but claimed that after this conversation, she advised her fiancé about the conversation. However, I cannot give any weight to what the Tenant reported to her fiancé because it is hearsay and therefore unreliable. Consequently, I find that it is a matter of the Tenant's word against J.S.'s and in the absence of any reliable, corroborating evidence from the Tenant, I find that she has not proven that the Landlords agreed that she would not be responsible for the full rent for April 2012.

The Landlords argued that the Tenant was still responsible for paying rent for April 2012 because she did not give them *written notice* that she was ending the tenancy until after they cashed her rent cheque on April 2, 2012 (and that notice did not state an effective date but instead referred generally to the Parties' conversation on March 12, 2012). The Landlords claimed that they had some interested tenants view the property in March 2012 but after the Tenant's fiancé threatened on April 2, 2012 not to move out until the end of April 2012, they had to advise prospective tenants that the rental unit would not be available until the end of the month.

Under the terms of the Parties' tenancy agreement, rent is due in advance on the 1st day of each month. I find that the Tenant did not give written notice to end the tenancy until April 2, 2012. As a result, I find that the Tenant was responsible for paying rent for the month of April 2012 and therefore the Landlords were entitled to cash her rent cheque. As the Landlords did not receive rental income for April 2012 from a new tenant of the rental unit, I find that the Tenant is not entitled to recover an overpayment of rent for April 2012.

Conclusion

The Tenant's application is dismissed without leave to reapply. 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: June 12, 2012.

Residential Tenancy Branch