



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with the tenant's application for a decision as to whether the tenant owes the landlord rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Does the tenant owe the landlord rent?

Background and Evidence

The tenant signed a tenancy agreement on September 19, 2012 and paid the security deposit of \$347.50. The tenancy agreement provided as evidence indicates the tenancy commenced October 1, 2012 and the monthly rent of \$695.00 is payable on the 1st day of every month. The tenant did not pay rent October 1, 2012. The tenant attended the property on October 13, 2012 during which time he paid \$695.00 and received the keys to the rental unit. The tenant moved some of his belongings into the unit between October 13, 2012 and October 31, 2012.

In early November 2012 the landlord sought rent from the tenant. The tenant's response was that he had paid rent for November 2012 by way of the payment he made October 13, 2012. The building manager requested \$417.00 from the tenant [calculated as \$695.00 x 19/30 days for November 13 - 30] to bring the amount of rent paid to the end of November 2012. The tenant did not pay the \$417.00 that was requested but has been paying the monthly rent of \$695.00 starting December 1, 2012 onwards.

The tenant submitted that when he signed the tenancy agreement on September 19, 2012 the tenancy start date was left blank and that it was filled in sometime after he signed it. The tenant submitted that he informed the building manager after he signed the tenancy agreement that he had to give a month's notice to his former landlord and

he would be taking the rental unit starting November 1, 2012. The building manager indicated this was acceptable. When the tenant presented payment of \$695.00 on October 13, 2012 he was of the understanding this was an advance payment of the rent due November 1, 2012. The building manager did not inform the tenant that the tenancy was starting October 13, 2012.

The landlord submitted that the building was newly built and that the majority of units were rented out quickly due to the reasonable rental rates. The landlord submitted that the terms of tenancy are subject to his approval, meaning the building manager does not have the authority to change the pre-printed terms without his consent.

The building manager testified that all tenants attending the property in September 2012 were presented with pre-printed tenancy agreements indicating the tenancy was to commence October 1, 2012. When the tenant signed the tenancy agreement on September 19, 2012 the start date was clearly indicated on the tenancy agreement as October 1, 2012. The building manager acknowledged that the tenant indicated he had to give notice to his former landlord; however, there was not an indication the parties had agreed to change the start date of the tenancy.

The landlord was expecting payment of \$695.00 from the tenant October 1, 2012 and several messages were left for the tenant to contact the landlord. The tenant attended the property with the rent payment on October 13, 2012 and he was provided the keys to the unit in return.

Both parties provided consistent testimony that the tenant was provided a copy of the tenancy agreement when it was slid under the door of the rental unit October 13, 2012 or later. The parties did not agree as to which date this occurred.

In early November 2012, when the dispute arose concerning rent for November 2012 the building manager requested the tenant pay pro-rated rent of \$417.00 by November 13, 2012. The tenant did not pay the amount requested but filed this application seeking a resolution to this dispute.

Analysis

Under the Act, a party's obligation under a tenancy agreement starts when the tenancy agreement is formed. A tenancy agreement forms when the parties execute a written tenancy agreement or when the landlord collects a security deposit, whichever date is earlier. In this case, a written tenancy agreement and a security deposit were collected

on the same date of September 19, 2012 and I find a tenancy agreement formed on that date.

The written tenancy agreement provided as evidence indicates the tenancy was to start October 1, 2012. The issue under dispute is whether the tenancy agreement was blank when the tenant signed it and the parties had an agreement to start the tenancy November 1, 2012. The parties provided a different version of events and my decision is based on the balance of probabilities.

Upon review of the tenancy agreement provided for my review I find it more likely than not that the start date of October 1, 2012 was pre-printed on the tenancy agreement as submitted by the landlord. I note that certain static terms are type-written, such as: the landlord's name, the landlord's service address, the address of the building, and the date rent is payable. Whereas, certain terms that are variable in nature are hand written, such as: the tenant's name, the rental unit number, the amount of rent payable, and the amount of the security deposit payable. Therefore, I find it more likely than not that the start date of October 1, 2012 appeared on the tenancy agreement presented to the tenant for his signature on September 19, 2012.

When a tenancy forms the parties must agree on the terms of tenancy. An essential term is the commencement date of the tenancy. Thus, it is not possible to form a tenancy without establishing the date the obligations of the parties commence. Accordingly, I reject the tenant's position that the start date was left blank when he signed it and was to be filled in later.

It is upon a party entering into an agreement to read and understand the terms they are agreeing to before executing the document. The landlord does not have an obligation to verbally inform the tenant as to the content of the written agreement. Rather, the landlord is obligated to create clearly understandable terms that do not conflict with the requirements of the Act. I find the start date reflected on the tenancy agreement is clearly understandable and enforceable.

I accept that the tenant may have wished to change the start date of the tenancy to November 1, 2012 when he learned that he would be held responsible for paying rent at his former unit for the month of October 2012 the tenant's circumstances do not create a basis to change the tenancy agreement without the landlord's agreement. I find I was provided insufficient evidence that the landlord agreed to change the tenancy agreement to reflect November 1, 2012. Nor was I was not provided evidence that the landlord or building manager released the tenant from his obligation to pay rent for October 2012 with the exception of the period prior to October 13, 2012.

In summary, I find the tenant has not established a basis for me to conclude that the tenancy was set to commence November 1, 2012 as he submitted. I find the landlord's request that the tenant pay rent of \$417.00 to be very reasonable and enforceable under the terms of the tenancy agreement and the Act.

I make no award to the tenant for recovery of the filing fee.

Conclusion

The landlord is entitled to receive rent of \$417.00 from the tenant. The landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent if the tenant does pay this amount to the landlord.

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 13, 2013

Residential Tenancy Branch

