



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application filed by the tenants seeking to cancel a Notice to End Tenancy Given for Cause.

At the hearing of this matter the parties agreed that a Notice to End Tenancy for Cause had not been served, however a 10 day Notice to End Tenancy had been served in person on the tenants on January 8, 2013.

The tenants submitted that someone at the Residential Tenancy Branch called them to advise them to correct their Application to seek to cancel a 10 day Notice to End Tenancy rather than a Notice to End Tenancy for Cause because it appeared that a notice for cause had not been served. The tenants say they did correct their application and faxed it back to the Residential Tenancy Branch.

Although it appears that the tenants did not formally amend their application to make this change I will accept that it was their intention to seek to cancel a 10 day Notice to End Tenancy for unpaid rent and as the landlord has had notice that a notice was to be disputed in this application I will proceed with this hearing on that basis.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Does the landlord have caused to end this tenancy (unpaid rent)?

Background and Evidence

The landlord testified that this property was owned by the parents of the male tenant and the tenants rented the property from them prior to the landlord becoming the property's owner. The tenants were paying rent of either \$1,400.00 or \$1,700.00 per month when the property was sold to AM and SM in or about October 2012.

On October 19, 2012 AM and SM entered into a new Tenancy Agreement with the tenants. The parties agreed that rent would increase to \$2,700.00 per month and the tenancy was set for a fixed term of 12 months ending December 2013. The Agreement notes that the tenants paid a security deposit of \$1,350.00 on October 22, 2012.

On November 5, 2012 due to some financial problems of the tenants the parties agreed to enter into an Addendum to the Tenancy Agreement. In the Addendum the rent was reduced from \$2,700.00 per month to \$2,000.00 per month for the months of December 2012, January 2013 and February then, for March, April and May 2013 the rent would be \$2,350.00 and resume on June 1, 2013 at the full rate of \$2,700.00 until the end of the fixed term.

Sometime between October and November 7, 2012 ARK, the person named as landlord in this application, purchased the property from AM and SM by way of an Agreement for Sale. ARK also signed the Addendum agreeing to be "...bound by all the terms and conditions within the Lease Agreement dated October 19, 2012". ARK testified that one of the terms of the Addendum was that the tenants would provide the deposit cheque of \$1,350.00 and 12 post dated cheques. ARK testified that AM and SM had the post-dated cheques and they endorsed all of the cheques over to ARK. ARK testified that the deposit cheque went through "...just fine..." however the January 2012 rent cheque was returned because the tenants had put a stop payment on it.

The landlord then issued and served a 10 day Notice to End Tenancy for unpaid rent on January 8, 2013 stating that the tenants owed \$2,700.00 for January's rent. The tenants paid \$1,700.00 being the original amount of rent they paid prior to entering into the new Tenancy Agreement in October 2012.

The tenants agree they were served with a 10 day Notice to End Tenancy naming ARK as the landlord but they did not have a Tenancy Agreement with ARK so they did not pay the sum requested on the 10 day Notice (\$2,700.00).

ARK says it is not true that the tenants did not know who he was. ARK says he went to introduce himself to the tenants in December at which time he showed them that their deposit and post-dated rent cheques had been endorsed over to him by AM and SM.

The tenants say this is not true. The tenants agree that they met with ARK in December but they had no idea he had purchased the house. The tenants say that if ARK had been gracious enough to explain the situation and give them time to get their bearings straight they would have paid the rent. All the tenants knew was that in January the cheque they issued to AM and SM for the rent deposit was cashed by someone they did not know, they therefore put a stop payment on the rest of the cheques. As soon as

they realized that ARK was the new landlord they offered to issue new cheques in the sum they paid to the previous landlords (\$1,700.00) until they could sit down and work out a new Tenancy Agreement. In response to this the tenants say they were served with a 10 day Notice to End Tenancy for unpaid rent which they are now disputing.

The 10 day Notice to End Tenancy submitted in evidence seeks \$2,700.00 in rent due January 1, 2013 even though ARK says he agreed to accept reduced rent as set out in the Addendum. ARK says he requested \$2,700.00 on the 10 day Notice to End Tenancy because he believed the Addendum was no longer valid because the tenants had breached the Addendum by putting stop payments on their cheques. Given this ARK presumed that the rent reverted back to the original \$2,700.00 as set out in the Tenancy Agreement. ARK submitted that if the Arbitrator found that the Addendum is still valid the tenants actually owe \$300.00 for January's rent (\$2,000.000 less \$1,700.00 paid = \$300.00 owing) and that they have also now paid \$1,700.00 for February and therefore owe \$300.00 for February or a total of \$600.00.

The tenants say that they were paying \$1,700.00 a month when AM and SM purchased the property and they did agree to pay them \$2,700.00 rent in the Agreement of October 19, 2012 but they now realize they cannot sustain a \$1,000.00 rent increase. The tenants say they told AM and SM that they would have to make a new Tenancy Agreement and they wish to do that now.

ARK says he does not wish to accept payment to continue this tenancy or enter into a new Tenancy Agreement with these tenants. ARK says that he knows from the previous landlord who is the father of the male tenant that these tenants are always late with their rent and this is the reason the father sold the house.

The tenants say this is simply not true.

The landlord requested an Order of Possession if the tenants' application is dismissed.

Analysis

When landlords sell properties housing tenants to new owners the new owners are bound by terms of the existing Tenancy Agreement whether it is a formal written agreement or not. In this case however, and for reasons that are not clear to me, the evidence is that the tenants entered into a new Tenancy Agreement with the new owners AM and SM (who I will refer to as the "first new owners"). Amongst other things, the tenants agreed to a rental increase of \$1,000.00 per month, the payment of a security deposit and the creation of a new fixed term. The tenants questioned "How

could we know?" that there was no requirement for them to enter into a new tenancy agreement with the "first new owners".

Shortly after the signing the new Tenancy Agreement and Addendum the first new owners sold the property to ARK who (who I will refer to as the "second new owner"). The tenant's cheques were signed over to the second new owner but the tenants say they were not aware of this

In any event, the evidence shows that the tenants did provide the second new owner a cheque for January rent but in the sum of \$1,700.00 not the \$2,000.00 agreed to in the Addendum. The second new owner therefore served a 10 day Notice to End Tenancy.

One can understand the confusion with respect to who was the landlord in this case; however there can be no confusion with respect to the rent to be paid. It was, according to the Addendum \$2,000.00 per month for January and February and, on March 1 it would increase to \$2,350.00.

While there was no requirement for the tenants to enter into this new Tenancy Agreement at all, they did do so. To their question "How could we know?" the fact is that it is incumbent upon each of us to be aware of the laws that govern us and for landlords and tenants to be aware of their rights and obligations under the *Residential Tenancy Act*. In any event having entered into a new Agreement I find that the tenants were bound to pay the sum of \$2,000.00 for January's rent but they did not. February 1 has now passed and the evidence is that the tenants have only paid \$1,700.00 for February as well.

I find that there are rental arrears owing and I therefore decline to cancel the 10 day Notice to End Tenancy and I dismiss the tenants' application to do so.

The landlord has requested an Order of Possession. Having dismissed the tenants' application the law requires that I issue that Order. That Order shall be issued effective 2 days after service.

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 04, 2013

Residential Tenancy Branch

