



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AGB Properties Ltd.
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes:

Tenant's application filed April 4, 2013: AS; CNR; DRI; OLC; FF

Landlord's application filed April 24, 2013: OPR; OPB; MNR; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent; to dispute an additional rent increase; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord allow the Tenant to assign or sublet the rental unit; and to recover the cost of the filing fee from the Landlord

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord received the Tenant's Notice of Hearing documents and documentary evidence on April 9, 2013. It was also determined that the Tenant received the Landlord's Notice of Hearing documents and documentary evidence on April 26, 2013. I find that both parties were sufficiently served in accordance with the provisions of Section 71 of the Act.

It is important to note that the Landlord provided additional evidence to the Residential Tenancy Branch on May 1, 2013 (the day before the Hearing). This evidence was not provided within the time frame provided in the Residential Tenancy Branch's Rules of Procedure, and was not provided to the Tenant and therefore will not be considered.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent issued April 2, 2013 (the "Notice") be upheld or canceled?
- Has the Landlord unreasonably refused to allow the Tenant to sublet or assign the rental unit?

- Is the Tenant in arrears of rent for January, February and March, 2013?

Background and Evidence

This tenancy began on May 1, 2011. Current monthly rent is \$1,180.00, which includes \$15.00 for parking. Rent is due on the first day of each month. Paragraph 1 of the tenancy agreement provides that the Tenant “may have a roommate”. Paragraph 6 of provides that “for each additional tenant or occupant not named in clause 1 or 2 above the rent will increase by \$125.00 per month, effective from the date of his occupancy”.

The Landlord’s agent and its lawyer gave the following testimony and submissions:

- The Landlord’s agent (“RB”) has been working for the Landlord for the past 4 months.
- On January 25, 2013, RB received a phone call from “RM”. RM stated that he had sublet the rental unit from the Tenant and had lost his keys. RB searched the Landlord’s file and electronic records and discovered that there was only one registered Tenant for the rental unit.
- On February 4, 2013, the Landlord received a written request form the Tenant seeking permission for additional occupants. An Application for Occupant form was completed by RM and another person (“CE”), and submitted to the Landlord for approval. On March 1, 2013, the Landlord approved the additional occupants and advised the Tenant that rent would increase by \$125.00 effective April 1, 2013, and a one-time charge of \$375.00 would be added to April rent, to be applied to January, February and March’s increase for additional occupants.
- The Tenant was asked to provide a new pre-authorization for automatic withdrawal from his bank account, but the Tenant did not do so. Paragraph 44 of the tenancy agreement provides that rent payments be done by pre-authorized withdrawals (“PAD”). The Landlord submits that this is a material term of the tenancy.
- On April 1, 2013, the Tenant provided two rent cheques for April and May, 2013, each in the amount of \$1,180.00. The Landlord has not cashed the cheques because: they were for the wrong amount; and the tenancy agreement requires rent to be paid by PAD.
- The Landlord served the Tenant with the Notice on April 2, 2013, for \$1,680.00 in unpaid rent that was due on April 1, 2013.

- On or about April 23, the Landlord determined that RM and CE had both moved out of the rental unit in March, 2013.

The Tenant gave the following testimony:

- The Tenant spent a lot of time in another City and therefore for most of the year the rental unit was vacant. The Tenant knew that he was going to be away for three months from November 26, 2012 until February, 2013, so he arranged for CE to move in on December 27, 2012, and for RM to move in on January 1, 2013. The Tenant phoned the Landlord and advised that someone else would be living in the rental unit while he was away.
- The Tenant returned to the rental unit on February 23, 2013. CE had already moved out but RM was still there until January 1, 2013.
- The Tenant sent a note to the Landlord explaining that there only ever two people living in the rental unit and therefore there was no additional occupant to warrant a \$125.00 additional charge.
- The Tenant's bank informed him that the Landlord attempted to withdraw more from his account than was authorized for April, 2013, which disturbed the Tenant and caused him to change his account.
- The Tenant gave the Landlord two cheques for April and May rent, but the Landlord returned them to the Tenant.
- The Tenant advised the Landlord's property manager ("AB") in the first week of March that both of the occupants would be gone by the end of March. AB knew that there were only ever 2 people living in the rental unit. Most of the Tenant's dealings were with AB.

Adjournment

At this point in the Hearing, RB attempted to call AB so that AB could give testimony. RB was not successful in contacting AB. The allotted time for the Hearing ran out before final submissions could be made. Therefore, I adjourned this matter to a date and time to be provided.

I ordered that the Tenant provide the Landlord with \$2,360.00 immediately, representing payment towards April and May's rent. I explained that this payment would be for use and occupancy only of the rental unit until this matter had been fully heard and a decision reached.

Conclusion

This matter is adjourned to the time and date provided in the enclosed Notice of Reconvened Hearing. Neither party is required to serve the other with the Notice of Reconvened Hearing.

The Tenant is ordered to provide the Landlord with \$2,360.00 immediately, representing payment towards April and May's rent, for "use and occupancy" of the rental unit until this matter has been fully heard and a decision reached.

This interim 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: May 06, 2013

Residential Tenancy Branch