



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent, for more time to make the application and to recover the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on April 16, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are the Tenants entitled to more time to make the application?

Background and Evidence

This tenancy started on June 1, 2012 as a fixed term tenancy with an expiry date of May 31, 2013. Rent is \$1,060.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 on May 28, 2012.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated April 4, 2013. She served the Notice on April 4, 2013 by posting it on the door of the Tenants’ rental unit. The Effective Vacancy date on the Notice was April 18, 2013. The amount of unpaid rent on the Notice was \$2,035.00.

The Landlord continued to say that the Tenants have unpaid rent of \$1,760.00 at this time which is a running total calculated from the Management Company’s documents. The Landlord said the Tenants have made rent payments in various amounts and at various time so she has just indicated the total amount of unpaid rent as at May 14, 2013

The Tenant said the Ministry pays \$525.00 as part of the rent which is sent to the Landlord directly. The Tenant continued to say that the balance of the rent is paid by the other Tenant and they agree there is unpaid rent to the Landlord. The Tenants said they dispute the amount of rent that the Landlord is claiming. The Tenant said he is not sure how much unpaid rent there is, but they believe it is less than \$1,760.00.

Analysis

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due and as the Tenants have said there is unpaid rent to the Landlord I find the Tenants have not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated April 4, 2013 stands in effect.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the application fee of \$50.00 which they have already paid.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy 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: May 14, 2013

Residential Tenancy Branch