



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC,FF,O

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations or tenancy agreement, to recover the filing fee and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on May 1, 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 in the Landlord’s absences.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Are there losses or damage and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?
4. Has the landlord complied with the Act, regulations and tenancy agreement?
5. What other considerations are there?

Background and Evidence

This tenancy started on February 1, 2013 as a 1 year fixed term tenancy. Rent is \$2,000.00 per month. The Tenant said the tenancy agreement says rent is due on the 1st day of each month, but there is an addendum to the tenancy agreement that states rent is paid \$1,000.00 on the first on the month and a \$1,000.00 is paid on the 21st of each month. The Tenant paid a security deposit of \$1,000.00 in advance of the tenancy.

The Tenant said the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated April 21, 2013 even though the Tenants offered the Landlord the rent payment on April 21, 2013. The Tenant said the Landlord would not

accept the rent in person so they delivered the rent cheque to the Landlord's house and posted the cheque on the door but the Landlord still did not accept the rent payment. The Tenants continued to say they have now paid the rent by registered mail which was sent to the Landlord on May 1, 2013.

The Tenants continued to say that the utilities are in the Landlord's name and the Landlord has not provided them with an accurate statement of the utilities owed therefore they have not paid the utilities to date. The Tenant said the Landlord has not provided the utility bills to them. The Tenant continued to say the tenancy agreement states the Tenants are to pay 65% of the utility bill when the lower unit is occupied and 100% of the utility bills when the lower unit is not occupied.

The Tenants said they have tried their best to accommodate the Landlord, but the Landlord has demonstrated hostile behaviour towards them and the Tenants think he is harassing them with Notices to End the Tenancy.

The Tenants continued to say their monetary claim of \$2,500.00 is for estimated moving expenses if the Landlord is successful in ending the tenancy.

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.

I accept the Tenants testimony and evidence that they have offered the Landlord the rent on the day it was due and have done what I consider to be responsible to pay the rent. The Tenants offered the rent on April 21, 2013 in person to the Landlord, the Tenants posted the rent cheque on the Landlord's door on April 22, 2013 and they mailed the rent cheque to the Landlord by registered mail on May 1, 2013.

Consequently I find the Tenants have met their responsibility in paying the rent even if the Landlord has not cashed the rent cheque. Consequently I order the Notice to End Tenancy dated April 21, 2013 is cancelled and the tenancy is to continue as per the tenancy agreement.

Further I order the Landlord to provide copies of the actual utility bills to the Tenants so they can review the actual bill and then pay the utility bill within 30 days of receiving formal demand to pay the utility bills. As well since the Tenants have not received the actual bills to date the unpaid utilities are dismissed from the 10 Day Notice to End Tenancy for unpaid rent or utilities dated April 21, 2013.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Tenants monetary claim for estimated moving expenses of \$2,500.00, this claim is only an estimated cost which has not happened therefore no loss can be proven or verified. Consequently, I dismiss the Tenants' monetary claim for \$2,500.00 for moving costs without leave to reapply.

As the Tenants have been partially successful in this matter I Order the Tenants to recover the \$50.00 filing fee from the Landlord by reducing the June, 2013 rent by \$50.00 from \$2,000.00 to \$1,950.00 for the month.

Conclusion

The 10 Day Notice to End Tenancy dated April 21, 2013 is cancelled and the tenancy is ordered to continue as per the Tenancy agreement.

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 15, 2013

Residential Tenancy Branch

