



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRESIDE PROPERTY GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated June 2, 2013 with effective date of June 12, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2013 indicating that rental arrears of \$150.00 had been accrued as of June 1, 2013. The landlord testified that the tenant and her spouse/cotenant reside in a rental unit for which the agreed-upon market rent is \$700.00. The landlord testified that each of the cotenants receives a rent abatement of \$75.00 for a total of \$150.00 per month in compensation for their duties performed as caretakers.

According to the landlord, the female co-tenant, who was present at the hearing, had not been performing her caretaker duties in May and June 2013, due to illness and therefore was not entitled to receive the \$75.00 rent reduction for her role as caretaker for the month of May 2013 nor the \$75.00 rent reduction for the month of June 2013. The landlord testified that the tenant did not pay the additional \$75.00 owed for each of

those two months and therefore a 10-Day Notice to End Tenancy for Unpaid Rent was issued for the arrears of \$150.00 and served on the tenant.

The tenant testified that the tenancy began in December 2008 and at that time the parties entered into a verbal tenancy agreement that required the tenant and her spouse to act as caretakers.

The tenant testified that it was her understanding that the landlord could not suddenly impose a rent increase of \$75.00 without adequate notice and she disagrees with the 10-Day Notice to End Tenancy for Unpaid Rent.

Analysis

Section 13 of the Act states that a landlord must prepare in writing every tenancy agreement entered into and that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(my emphasis)

The Act requires that within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

In this instance I find that the landlord did not create a written tenancy agreement in compliance with the Act. I find that the parties instead entered into a verbal tenancy agreement that involved a portion of the rent being waived for caretaker services by each of the two co-tenants. Although a written agreement is required, oral terms contained in verbal tenancy agreements may still be recognized and enforced because section 1 of the Act, contains the following definition of "tenancy agreement":

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit; (my emphasis)

Although section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, the difficulty here is determining what terms were agreed upon by these two parties at the start of the tenancy. Section 46 of the Act permits a landlord to terminate a tenancy for unpaid rent if a tenant does not pay the rental arrears owed within 5 days. However, the amount of the compensation accepted at the time the tenancy began and under what circumstances the landlord is entitled to rescind this compensation is not documented and no evidence was submitted by the landlord to prove the nature of the tenancy term. Moreover, I find it is being disputed by the tenant.

The burden of proof to justify the Notice is on the landlord. I find that the landlord's failure to provide clarity of the terms of this tenancy through a written tenancy agreement prevents me from verifying the applicable rent in the circumstances of this case. Therefore I am not able to make a determination about whether the arrears claimed on the 10-Day Notice to End Tenancy for Unpaid Rent are valid.

Accordingly, I find that the Ten Day Notice to End Tenancy for Unpaid Rent dated June 2, 2013 is cancelled and of no force nor effect.

However, the tenant acknowledged that the landlord is entitled to cease her caretaker compensation during the period that she is not able to perform her duties. The parties agreed to discuss this matter further and come to a resolution with respect to the amount of rent to be paid, given the tenant's incapacity.

Based on the testimony and evidence discussed above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated June 2, 2013 is cancelled and of no force nor effect.

The tenant is entitled to be compensated the \$50.00 cost of this application and is ordered to deduct this amount from the next rental payment to the landlord as a one-time abatement.

Conclusion

The tenant is successful in the application and the Ten Day Notice to End Tenancy for Unpaid Rent is cancelled.

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: July 02, 2013

Residential Tenancy Branch