



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, OPC, MNR

Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy served at the end of July 2013. The tenants vacated the premises on August 28, 2013 and so the question of the validity of the Notice is no longer in question.

In the second application the landlords seek an order of possession again, a moot issue, and seek recovery of unpaid rent. The hearing of this matter commenced on September 9, 2013 at which time it was confirmed the landlords sought to recover alleged unpaid rent for August and September. The matter was adjourned to this day for completion of the hearing.

Issue(s) to be Decided

Are the tenants in arrears of rent? Are they responsible for rent or loss of rental income to the landlords after they left on August 28, 2013?

Background and Evidence

The rental unit is a single family dwelling on a lot, with outbuildings. The tenancy started May 1, 2013. There is a written tenancy agreement indicating that the tenancy was for a three month fixed term and then to continue on a month to month basis unless otherwise agreed. There is an addendum to the tenancy agreement indicating the parties contemplated a possible purchase and sale of the home at an agreed price after the end of the fixed term.

The rent was \$1300.00 per month, due on the first of each month. The agreement calls for a \$650.00 security deposit to be paid May 1. There is a dispute whether the \$650.00 security deposit called for in the tenancy agreement was ever paid.

The tenancy agreement has been signed by all four parties and dated "May 1, 2013." The landlord Ms. W. indicates she thought that even though it was signed on April 21, the agreement started on May 1 and so that should be the date.

The landlords claim that the tenants did not pay the first month's rent or the security deposit and only started paying rent at the end of May and then the end of each month thereafter.

The tenants present bank records to show they paid by direct transfer into the landlords' bank, three payments; each of \$1300.00, on May 31, June 27 and August 1. Their bank records show a cash withdrawal of \$2700.00 on April 29th, which the tenant Mr. C. testified was money for May rent, a \$650.00 security deposit, a \$650.00 pet damage deposit and \$100.00 for dinner with the landlords, that he withdrew in anticipation of a meeting with the landlords on May 1. He says he met with the landlords on May 1 at the "Wildcat" restaurant, signed the tenancy agreement, received the keys and paid them \$1300.00 for May rent and a \$650.00 security deposit. He says they declined a pet damage deposit. He says the landlords told him the signed tenancy agreement would be his receipt for those payments. He says the direct deposits he thereafter made near the end of each month were payments of rent in advance and so he paid rent for every month up to and including August.

The landlord Ms. W. tells an entirely different story. She says the parties met around April 21 and signed the tenancy agreement. Though she indicated differently in a chronology she had filed for the hearing but not referred to by her, she stuck to the April 21 date in cross-examination. She says the tenants convinced her they had access to significant monies and were interested in buying the home. She gave them the keys early thinking they would make their rental payment May 1 and pay the deposit. She says she was at home in another town eight hours away on May 1 and didn't meet with the tenants. She says they didn't pay on May 1 and that she called them frequently over the next three months to get them to pay. She produces phone records to show sixteen telephone calls to the tenants in May, fifteen in June and nineteen in July. Many of them were one or two minute calls. A call made on May 2 appears to have lasted seventy-one minutes.

The tenant Mr. C. says the calls were in pursuit of Ms. W.'s charity work or were regarding a 9.6 volt battery.

Surprisingly, there is no correspondence apparent from the landlords to the tenants about paying the May rent. They had, at least, a "texting" capability as the landlords submitted some tenant texts. One would think there would have been correspondence

about payment of the rent and security deposit had they been outstanding. The landlord Ms. W. indicates she was persuaded or perhaps inclined to laxity about taking enforcement steps, thinking the tenants were going to purchase the home in August and that any money owing could be adjusted for in that transaction.

Matters came to a head at the end of July. According to the tenant Mr. C. he informed the landlords that he and his wife would not be purchasing the property. He says the landlord Ms. W. came to the home, assaulted Ms. C. and told them to move out by the end of July. The police attended. No charges have been laid. The landlord Ms. W. tells a different story though agreeing she was at the premises. She indicates she began to realize the tenants might not pay her the money they owed.

On July 30th the landlords served the tenants with a ten day Notice to End Tenancy for non-payment of rent and perhaps a second ten day Notice for non-payment of the security deposit (though there is no provision for a ten day Notice for that reason in the *Residential Tenancy Act*). The tenants applied (file 809680) to cancel that Notice. \$1300.00 was paid into the landlords' account on August 1 and so the landlords issued another ten day Notice to End Tenancy. They also issued a one month Notice to End Tenancy for cause, including "repeated late payment of rent."

Neither side related anything that happened between them from July 30 to the first hearing date on September 9.

The tenants say they packed up and moved August 28. The tenant Mr. C. testified that he left a telephone message with the landlords on that date, informing them they had left. The landlords indicate they did not know the tenants had moved out until the tenants announced it at the hearing on September 9th.

Analysis

Each side gives a believable account of what happened. The accounts are irreconcilable for the most part and most particularly about the cash payment of the first month's rent and security deposit.

The general rule is that the burden of proof of payment of a debt falls to the debtor; the tenants in this case. In that vein, the *Residential Tenancy Act* specifically provides that a landlord must provide a tenant with a receipt for rent paid in cash. A tenant who pays in cash and neglects to obtain a receipt is facing an uphill battle to prove payment. When a tenant swears he paid and the landlord swears he didn't, some corroboration is naturally required, in order for the tenant to satisfy that burden of proof.

In this case there is no convincing corroboration. The fact the tenant withdrew a considerable amount of money on April 29 is not convincing corroboration that he gave any to the landlords. I find that it is more likely than not that the tenants did not pay the May rent and security deposit. I find that, applying the rent actually paid to the oldest rent due, the tenants have not paid the August rent of \$1300.00.

Whether or not the tenants informed the landlords on August 28th or September 9th that they were gone makes little difference. A tenant wishing to end a tenancy must provide at least one rental period's notice in writing. No written notice was given here. Nor can a tenant avoid that notice rule by not paying rent or by giving a landlord cause to evict him.

I find that the tenants did not give the landlords proper notice to end the tenancy and that they are responsible for the September rent of \$1300.00.

Conclusion

The tenants' application is dismissed as moot.

The landlords' application is allowed. They are entitled to a monetary award of \$2600.00 plus the \$50.00 filing fee. There will be a monetary order against the tenants jointly and severally in the amount of \$2650.00.

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: October 01, 2013

Residential Tenancy Branch

