



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent.

Both the landlord and tenant participated in the teleconference hearing and both gave affirmed evidence.

Issue(s) to be Decided

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

Background and Evidence

The landlord gave evidence that the tenancy started in June 2013 and was a fixed term agreement ending May 31, 2014. The tenancy agreement specified that the tenant was obligated to pay \$1,200.00 per month in rent payable in advance on the first day of the month. The tenant and her then-roommate paid a security deposit totalling \$600.00.

The tenant gave evidence that she gave the landlord a series of post-dated cheques for \$600.00 which was her half of the rent.

The tenant gave evidence that her roommate moved out October 31, 2013. On October 29, 2013, the tenant gave a letter to the landlord saying that she could not afford the rent by herself although she could pay a lower amount of \$1,000.00 per month. The October 29, 2013 letter also gave notice that the tenant would move out on November 30, 2013.

The tenant gave evidence that the landlord cashed her November 1, 2013 rent cheque for \$600.00. She also told the landlord to keep the \$600.00 security deposit in lieu of

the balance of November 2013 rent. The tenant's evidence is that the landlord agreed to this.

The tenant gave evidence that she had a conversation with the landlord in November 2013, and the landlord told her that November 2013 rent would be \$600.00 and starting December 1, 2013 the rent would be lowered to \$1,000.00 per month. The tenant said she agreed to this proposal.

The tenant gave evidence that the landlord cashed her December 1, 2013 rent cheque of \$600.00 and she gave the landlord \$400.00 cash to make up the total December 2013 rental payment of \$1,000.00.

The tenant's evidence is that the landlord had a \$600.00 post-dated cheque for January 2014 and she intended to give the landlord \$400.00 in cash to make up the total January 2014 rental payment of \$1,000.00. However, she had financial difficulties and on January 1, 2014 did not have the \$400.00 cash for the balance of January 2014 rent. She told the landlord on January 1, 2014 that she did not have the \$400.00, but asked the landlord to retain the security deposit of \$600.00 and she would vacate the unit on January 31, 2014.

On January 2, 2014, the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Notice") by posting the Notice on the tenant's door. The Notice specified a move-out date of January 12, 2014. The tenant applied to dispute the Notice and, as a result, was not required to vacate the rental unit by the effective date on the Notice. The hearing took place on January 30, 2014 and the tenant gave evidence that she would be vacating the rental unit on January 31, 2014.

The tenant agrees that the landlord may keep her security deposit.

The landlord's position is that the landlord is already entitled to retain the security deposit as partial payment for November 2013 rent. For that reason, the landlord's position is that the tenant has not paid her entire rent for January 2014.

Analysis

The parties agreed that because of the passage of time between the Notice being served and the Dispute Resolution Hearing, and because the tenant will vacate the rental unit on January 31, 2014, there is no need for me to make a decision on the tenant's application.

The tenant has agreed that the landlord may retain her security deposit. I do not need to make a finding regarding whether there is any security deposit for the landlord to retain at this point. However, I note that this is a point of disagreement between the parties.

Conclusion

No further action is necessary and the file is closed.

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: February 3, 2014

Residential Tenancy Branch