



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, DRI, FF, MNR, MNSD, OPR

Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants' apply to cancel a notice to end tenancy for unpaid rent, to cancel a notice to end tenancy for cause, and to dispute a rent increase. The landlord applies for an order of possession and a monetary order for unpaid rent and utilities, and to retain the security deposit.

Both the landlord and one of the tenants 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?

Should the notice to end tenancy for cause be cancelled?

Should the rent increase be cancelled?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord gave evidence that the tenancy started in September 2012. The landlord's evidence is that the rent was initially \$1,000.00 per month payable in advance on the first day of the month, and there is a \$30.00 per month utility payment which is also payable in advance on the first day of the month.

The landlord gave evidence that she sent a 109-page evidence package to the RTB by fax, in eight parts, on February 10, 2014. She states the evidence package contained a copy of the tenancy agreement and other relevant documents. The landlord's evidence is that she has a transmission slip which indicates that all 109 pages were successfully

transmitted. However the RTB received only a 4-page fax, lacking a cover letter, on February 10, 2014.

The landlord gave evidence that the rent was increased to \$1,022.66 effective February 1, 2014. The landlord said that proof of the validity of the rent increase is contained in the missing faxed evidence.

The landlord gave evidence that she did not receive rent for January 2014 by the end of the day on January 1, 2014. Accordingly, she personally served a Notice to End Tenancy for Unpaid Rent (the "Unpaid Rent Notice") on the tenants on January 2, 2014. The Unpaid Rent Notice specifies that \$1,000.00 rent and \$30.00 utilities payment were unpaid that were due on January 1, 2014. The Unpaid Rent Notice specifies a move-out date of January 12, 2014.

The landlord gave evidence that she served the tenants at the same time with a Notice to End Tenancy for Cause (the "Cause Notice"), citing the cause "Tenant is repeatedly late paying rent".

The tenant gave evidence that the rent and utility payments totalling \$1,030.00 for January 2014 were placed in cash at the top of the stairs leading from the rental unit to the upstairs of the house on January 2, 2014. He gave evidence that the other tenant told him she placed the rent there and videotaped the money sitting at the top of the stairs. He gave evidence the other tenant told him she had propped bobby pins against the upstairs door, and later observed the money had disappeared and the bobby pins had fallen down.

The landlord gave evidence that she checked the top of the stairs at midnight on January 2, 2014 and there was no money sitting there. Her evidence is that the stairway connects the two living units; they are open stairs with no objects such as boxes sitting on the stairs. The landlord said she believed the other tenant was not being truthful in what the other tenant told the tenant who attended the hearing.

The landlord's evidence is that the tenants have not paid any rent or utilities since the Unpaid Rent Notice was served.

The landlord gave evidence that the tenants always paid their rent in cash and they sometimes left the rent at the top of the stairs. At other times, particularly when the rent was late, the tenants gave the cash to her directly.

Analysis

I accept the landlord's evidence that the tenants did not pay rent or utilities for January or February 2014. I give more weight to the landlord's statement that the January payments were not made, than to the tenant's statement that the other tenant told him the payments were made. The landlord is speaking from direct experience, whereas the tenant is relying on something told to him by someone else. Also, the tenant's evidence regarding the other tenant's statement about propping bobby pins against the upstairs door and videotaping money sitting on the stairs did not have a ring of truth.

For the reasons above, I dismiss the tenants' application to cancel the Unpaid Rent Notice. Since the Unpaid Rent Notice is effective in ending the tenancy, I do not need to deal with the tenants' application to cancel the Cause Notice.

I accept the landlord's evidence that she took proper steps to increase the rent effective February 1, 2014, because I found the landlord to be a credible witness. The tenants provided no evidence to indicate the rent increase was improper. Accordingly, the tenants' application to dispute the rent increase is dismissed.

Since the Unpaid Rent Notice is effective in ending the tenancy, I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord is entitled to a monetary order for unpaid rent and utilities for January 2014 totalling \$1,030.00 and unpaid rent and utilities for February 2014 totalling \$1,052.66. The landlord is also entitled to recover her RTB filing fee of \$50.00. The total amount due the landlord is therefore \$2,132.66.

I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,632.66. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order of \$1,632.66.

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 19, 2014

Residential Tenancy Branch

