



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant is obligated to pay \$585.00 in rent in advance on the first day of each month. They further agreed that the tenant paid her rent for February 2014 in full on February 4 and that on February 25, the landlord served her with a 10 day notice to end tenancy for unpaid rent (the "Notice").

The female landlord, T.C., testified that she served the Notice because the tenant's February rent was applied to arrears as the tenant had not paid rent in June 2012. The tenant testified that there was a flood in the rental unit in the spring of 2012 which resulted in considerable damage to her belongings and that the male landlord, B.C., told her that he would compensate her for the loss of her goods by waiving her rent for June 2012.

B.C. testified at the hearing, but although I asked him a number of questions about the flood in the unit, his conversations with the tenant and damage to her goods, he could not recall anything. T.C. testified that her husband is suffering from a health issue which has affected his ability to communicate.

T.C. testified that she recalled having been told that there was a flood in the rental unit in the spring of 2012, but she did not know any of the details regarding what damage

there had been to the tenant's goods or to the unit. She further testified that she did not know whether repairs were required as a result of the flood.

T.C. testified that she has always been actively involved as a landlord, but that she completely assumed the management role in the fall of 2012 when it became apparent that her husband was unable to act in that capacity. She stated that she had not been told about any arrangement to waive rent in June 2012 and that had such an arrangement been made, her husband would have told her at the time because they were both involved in managing the rental unit.

T.C. testified that she asked the tenant in July 2012 for June's rent and several more times after that, but it was not until February 2014 that she decided to apply the tenant's rent payment to rental arrears.

Analysis

Because the tenant has challenged the Notice, the landlord bears the burden of proving the grounds alleged in the Notice. In this case, the landlord must prove that there were monies owing at the time the Notice was served.

Because of B.C.'s inability to recall or to communicate his recollection of the events surrounding the flood of 2012, I must rely on the circumstantial evidence surrounding and following that event in order to determine whether B.C. did indeed waive the requirement that the tenant pay rent in June 2012. For the reasons which follow, I have concluded that it is more likely than not that B.C. waived the rent in that month.

Although T.C. stated that she was actively involved in managing the rental unit at the time the flood occurred, she did not know any details of the flood itself or whether it resulted in damage to the rental unit. I find it unlikely that someone who was actively involved in the management of a rental unit would not at the very least be aware of whether there was any damage resulting from flooding which would require capital outlay.

T.C. acknowledged that it was not until September 2012 that she assumed all of the management responsibilities involved with the rental unit and I find it very possible that prior to that time, B.C. could have told the tenant that she did not have to pay rent in June.

T.C. claimed to have asked for the rent several times, but those requests extended over the course of almost 2 years and I find it unlikely that had arrears been owing, she would have waited such a long time to attempt to collect payment or end the tenancy.

As I have found that B.C. waived the tenant's obligation to pay rent in June 2012, I find that there were no rental arrears at the time the Notice was served and therefore, the Notice was void from the outset. As a result, the tenancy will continue.

Conclusion

The Notice is void and of no force or effect. The tenancy will continue.

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: March 19, 2014

Residential Tenancy Branch

