



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

For landlord:	OPR MNR
For tenants:	CNR OLC RP LRE LAT FF

Introduction

This hearing dealt with both a review hearing of the landlord's original application, plus the tenants' application which had been crossed with the landlord's review hearing. The review hearing was granted based on the application of the tenants regarding the landlord's original Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") which was granted following the landlord's application through an ex-parte Direct Request proceeding. The tenants' application is to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), for an order directing the landlord to comply with the Act, for the landlord to make repairs to the unit, site or property, for authorization for the tenants to change the locks to the rental unit, and to recover the filing fee.

On March 3, 2013, the landlord's original Decision and Orders made on February 18, 2014 were suspended pending the outcome of this review hearing. The tenants, the landlord and an interpreter for the landlord attended the teleconference hearing. The parties had the hearing process explained to them. The parties confirmed that they both had a copy of the tenancy agreement and the 10 Day Notice before them as documentary evidence. I find the parties were served in accordance with the Act.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is their application to set aside the 10 Day Notice dated February 3, 2014. I find that not all the claims on the tenants' Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and the tenants' application to recover the filing fee at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply.

During the hearing, tenant "JP" was cautioned for interrupting the undersigned Arbitrator, and was warned that further interruptions would result in him being muted

during the teleconference hearing. Tenant “JP” was ultimately muted after failing to comply with the direction not to interrupt during the hearing.

Background and Evidence

The parties confirmed that a fixed term tenancy agreement began on February 1, 2013, and reverted to a month to month tenancy after January 31, 2014. A copy of the tenancy agreement was submitted in evidence. The parties agreed that monthly rent is \$1,550.00 due on the first day of each month.

Tenant “JP” confirmed that he received a 10 Day Notice dated February 3, 2014 on February 4, 2014. The 10 Day Notice indicates that the tenants owed \$1,550.00 in unpaid rent due February 1, 2014. A copy of the 10 Day Notice was submitted in evidence. The tenants did not apply to dispute the 10 Day Notice until February 12, 2014. The effective vacancy date listed on the 10 Day Notice was February 28, 2014.

The landlord verbally requested to include loss of rent for March 2014 and April 2014 since filing their original application for unpaid rent for February 2014. The tenants confirmed that they continue to reside in the rental unit.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant “JP” testified that he received the 10 Day Notice on February 4, 2014 and disputed the 10 Day Notice on February 12, 2014. The 10 Day Notice restates section 46(4) of the *Act* which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution. I find that as the fifth day fell upon a holiday, Monday February 10, 2014, the tenants had until the next business day, Tuesday, February 11, 2014 to apply to dispute the 10 Day Notice or pay the rent in full. In the matter before me, the tenants applied to dispute the 10 Day Notice on February 12, 2014, and provided no evidence to support that rent was paid.

Therefore, **I find** that as the tenants applied outside of the timeline permitted under section 46(4) of the *Act* and failed to provide any evidence to support that rent was paid in full, that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which in the matter before me, was February 28, 2014.

Therefore, **I dismiss** the tenant’s application in full, due to a late application and insufficient evidence. Pursuant to section 82 of the *Act*, **I confirm** the original decision and orders dated, February 18, 2014. The decision, order of possession and monetary order dated February 18, 2014, **stand and are of full force and effect**.

The landlord is at liberty to apply for loss of March 2014 and April 2014 rent as the tenants continue to occupy the rental unit. As the tenants' application did not have merit, I do not grant the tenants the recovery of their filing fee.

Conclusion

The tenants' application is dismissed due to late filing of their application and insufficient evidence, without leave to reapply.

The original decision and orders dated February 18, 2014 are confirmed. The decision, order of possession and monetary order dated February 18, 2014, stand and are of full force and effect.

The landlord is at liberty to apply for loss of March 2014 and April 2014 rent.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 1, 2014

Residential Tenancy Branch

