



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants to cancel a notice to end tenancy for unpaid rent or utilities.

One of the two tenants and both landlords attended the hearing and each gave affirmed testimony. The tenant also provided evidentiary material to the Residential Tenancy Branch and to the landlords prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on April 1, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 per month is payable in advance on the first day of each month and there are currently no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$750.00 and a pet damage deposit in the amount of \$400.00 and both deposits are still held in trust by the landlords.

The landlord further testified that the tenants gave the landlords post-dated cheques for rent and then replaced them with post-dated cheques from a different account. The cheques were for rent for the months of April, May and June. On April 10, 2014 the first rent cheque was returned for insufficient funds. The landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that day. A copy of the notice

has been provided and it is dated April 10, 2014 and contains an effective date of vacancy of April 20, 2014. The notice states that the tenants failed to pay rent in the amount of \$1,500.00 that was due on April 1, 2014. The landlord testified that the other landlord served it.

The landlords received the \$1,500.00 by mail on April 21, 2014. May's rent was paid in cash on May 1, 2014 and June's rent was paid prior to June 1, 2014 in cash as well. The landlord testified that the landlords issued receipts for all 3 payments that were marked "For Use and Occupancy Only," but copies have not been provided.

The other landlord testified that he personally handed the notice to end tenancy to one of the tenants in the living room of the rental unit on April 10, 2014 in the presence of a witness and the landlord also took a video of it with his cell phone.

The landlord further testified that the tenants' application claims that the tenants attempted several times to pay the rent and get ahold of the landlords without success, but there were no notes left at the landlords' door, nor were there any messages on answering devices of the landlords.

The tenant testified that the tenants attended at the rental unit on April 12 and 13th but the landlords did not answer the door. The tenants also placed calls to the landlords and left messages but did not hear back from the landlords. The tenant sent a money order to the landlords by Canada Post Xpress Post and has provided evidence of having sent it on April 14, 2014 and evidence of the money order being delivered to the post office at the receiving location on April 15, 2014. The tenant has also provided a copy of a text message that is not readable however the tenant has also provided a transcript in her handwriting and testified that the text message is dated April 15, 2014 at 1:39 p.m. to the landlords notifying them that the money order was successfully delivered to the landlords' mailbox at 9:38 that morning. Also provided is a document that is not readable that the tenant testified is a phone record showing 10 calls made to the landlords by the tenants on April 12, 2014 in an attempt to pay the rent in cash.

The tenant further testified that the landlords issued receipts for May and June rent that were marked "For Use and Occupancy Only," but not for the April payment.

Analysis

Where a tenant disputes a notice to end tenancy the onus is on the landlord to prove the validity of it which can include the reasons for issuing it. In this case, I have reviewed the notice and find it is in the correct form, and both pages of the 2-page form have been provided by the tenants.

The landlord testified that receipts for use and occupancy only were given to the tenants for all 3 rent payments received after the issuance of the notice, but the tenant disputes that testimony. The tenant agrees that such receipts were issued for May and June but not for the April payment. No receipts have been provided for this hearing, and I find that the landlords have failed to establish that the April payment did not serve to re-instate the tenancy.

The tenant also takes the position that the rent was paid within the 5 days specified in the *Act*. The parties agree that the tenant was served with the notice to end tenancy on April 10, 2014. The *Act* specifies that if the tenant pays the rent within 5 days, the notice is of no effect. The *Act* also specifies that if the tenant does not pay the rent or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy. The tenants disputed the notice on April 15, 2014, which is within the 5 day period. The tenants have also provided evidence of having sent the money order to the landlords on April 14, 2014 and the landlords were notified that it was at the post office for pick-up on the 15th of April. I find that the tenants did pay the rent within the 5 day period, and the notice is of no effect and must be cancelled.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the filing fee, and I order the tenants be permitted to reduce rent for the month of July, 2014 by \$50.00 as recovery.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled and the tenancy continues.

I hereby order that the tenants be permitted to reduce rent by \$50.00 for the month of July, 2014 as recovery of the filing fee.

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: June 05, 2014

Residential Tenancy Branch

