



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding T & E HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnr

Introduction

The tenant has applied for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (the "Notice") given for unpaid rent.

Issues to Be Decided

- Should the Notice be cancelled, and the tenancy continue?

Background and Evidence

This tenancy began on November 1, 2013. Rent is due on the 1st day of each month in the amount of \$630.00.

The tenant alleges that there was a flood in the premises in January. He attended to clean up and repairs, and then provided receipts to the landlord for these costs, and deducted a comparable amount from the rent. He submits that the landlord agreed his costs, which exceed \$300.00, could be deducted from his rent. All rent has been paid, and no rent is owed.

The landlord alleges that the tenant had arrears of \$300.00 owing since January. After a first flood on May 10, the landlord agreed that the tenant could have a credit of \$150.00 towards the arrears owed, leaving a balance owing by the tenant of \$150.00. A second flood occurred July 8. At this point the tenant owed \$180.00, as a result of a further shortfall in rent. The tenant wanted another deduction from rent for cleaning he had done, but the landlord declined at agreed. The landlord issued a Notice to End Tenancy on July 4, 2014, and another on September 2, 2014. The tenant paid an extra \$20.00, leaving a balance of \$160.00.

Analysis

The conduct and /or evidence of both parties is problematic in some regards. The tenant characterizes the expenses he incurred as for emergency repairs, when in fact they do not qualify as such under the requirements of the Act. Further the specific procedures regarding emergency repair reimbursement was not followed by the tenant.

The landlord has failed to provide receipts to the tenant for the rents paid, making it impossible to verify the exact amounts paid. Further, the landlord's testimony does not line up with the first Notice to End Tenancy, which indicated that there were \$300.00 arrears owing. By his testimony, at that stage he had already provided a \$150.00 credit. Further the landlord was not able to explain to my satisfaction the reason for the \$20.00 receipt given in September, while the tenant's explanation was far more credible, namely that he had been \$20.00 short in his September rent, and paid a further \$20.00 the next day.

The burden of proof of rental arrears lies with the landlord, and under the circumstances I cannot accept the landlord's testimony as being fully accurate or reliable, and note that it is for this very reason that the Act requires receipts given for all cash rent. I therefore find that the landlord has failed to prove, on a balance of probabilities that there are arrears owing by the tenant.

I therefore order that the notice be cancelled. The tenancy shall continue.

Conclusion

The notice to end tenancy dated September 2, 2014 is cancelled.

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: October 28, 2014

Residential Tenancy Branch

