



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CC MGMT SERVICES
and [tenant name suppressed to protect privacy]

Dispute Codes CNR, MNR, OPR, OPL, OPB, FF

Introduction

This hearing dealt with an application by the tenants to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and a cross application by the landlord seeking to terminate the tenancy based on the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord also seeks a monetary order for arrears owed.

Both parties were present at the hearing and the hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

In addition to the request for an order of possession and monetary order based on the 10 Day Notice to End Tenancy for Unpaid Rent, the landlord's application also seeks an order of possession based on a *2 Month Notice to End Tenancy for Landlord's Use* and a *1 Month Notice to End Tenancy for Cause*.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if the arbitrator determines it appropriate to do so, he or she may sever and dismiss the unrelated disputes contained in a single application, with or without leave to reapply.

I find that the three different Notices referred to in the landlord's application each relate to separate and distinct sections of the Act. For this reason, I find that this hearing will only deal with the tenant's application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and the landlord's cross application seeking an order of possession and monetary order pursuant to the 10-Day Notice under section 46 of the Act and

Therefore, I hereby sever the remaining portions of the landlord's application for orders of possession based on the 1 month and 2 month Notices and dismiss them with leave to reapply.

Accordingly, only the landlord's request for an order of possession and monetary order based on the 10 Day Notice and the tenants' application for an order to cancel the 10 Day Notice, will be heard and determined.

Issues(s) to be Decided, Landlord's Application

- Is the landlord entitled to monetary compensation for rental arrears?
- Is the landlord entitled to an Order of Possession?

Issues(s) to be Decided, Tenant's Application

- Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence

The landlord has applied for an order of possession for unpaid rent and a monetary order for \$4,000.00.

Submitted into evidence is a copy of the tenancy agreement showing that the tenancy began on December 15, 2011 with rent of \$1,700.00 per month due on the first day of each month. The agreement is for a fixed term ending on December 14, 2014, after which the agreement would continue as a month-to-month tenancy. The tenant paid a security deposit of \$800.00.

In the "*DETAILS OF THE DISPUTE*", section of the application, the landlord indicates that the tenant is continuously late paying rent, and only makes partial payments. The landlord also indicates that rent payment cheques have bounced, that utilities have not been paid for 3 years and that the tenant is operating a business without permission.

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent dated December 22, 2014, is in evidence and shows outstanding rental arrears of \$4,000.00 are now owed by the tenant. The effective date shown for the tenancy to end is December 22, 2014.

No amount is shown in the section on the 10 Day Notice reserved for utility arrears.

The landlord did not submit a monetary order worksheet, but testified that the tenants have failed to pay charges for the provision of T.V. Cable.

The landlord included 65 pages containing copies of invoices from the cable and telephone companies, through accounts in the landlord's name. In addition to the basic cable and rental of the equipment, the invoices include movie charges, telephone charges and internet service charges.

The landlord submitted a written list calculating cable charges and payments made by the tenants from December 2011 to May 2014. The landlord's records in evidence indicate that there is an outstanding total of \$2,467.90 in cable services left unpaid by the tenants.

The landlord's list also includes a calculation of the portion of the cable services used by the landlord through this same account. The landlord's costs for their own cablevision usage is not being claimed against the tenants.

According to the tenancy agreement in evidence there are checkmarks showing that water, stove and oven, dishwasher, refrigerator, window coverings, cable vision, laundry and storage are included in the rent. (my emphasis)

The landlord testified that their claim for the cost of cablevision is pursuant to a secondary agreement arranged between the parties in which the tenant consented to paying the landlord directly for enhanced cable services. No copy of this alleged agreement was submitted into evidence.

The tenants did not dispute that they agreed to pay the landlord for some of the extra cable services. The tenants stated that they only owe the landlord \$350.00 for five months of service at \$70.00 per month. They do not agree with the landlord's claim that they owe \$4,000.00 in utilities or rent.

The tenants testified that, although the 10 Day Notice states that they are in rental arrears for \$4,000.00, their rent is actually paid in full. The tenants submitted copies of rent payment cheques showing that these were successfully cashed by the landlord.

The landlord did not submit a rental ledger into evidence, to verify the amount of rental arrears but testified that she has sent numerous communications to the tenant about the outstanding rental arrears. The landlord testified that the tenants have been utilizing the property as a resort and has made a substantial profit, but neglected to pay the landlord for arrears.

Analysis Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

In this instance I find that the landlord has not successfully established that the tenants are in arrears for \$4,000.00 in rent as claimed on the 10 Day Notice.

In regard to the landlord's claim that the tenants are in arrears for utilities, section 46(6) of the Act provides that if a tenancy agreement requires the tenant to pay utility charges

to the landlord, and they remain unpaid more than 30 days after a written demand for payment has been issued, then the landlord may treat the utility charges as unpaid rent and may serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities.

In this instance I find that the 10-Day Notice does not indicate that any utility payments are owed by the tenants for cablevision charges. Moreover, with respect to the arrears for cable utilities, I find that the tenancy agreement clearly indicates that cablevision is included in the rent.

For this reason, I find that the 10 Day Notice to End Tenancy for Unpaid Rent must be cancelled as the landlord has provided insufficient proof that the tenants owe \$4,000.00 in rent.

In regard to the monetary claim, the landlord stated that there is a secondary agreement in regard to additional or enhanced cable service, no copy of this secondary agreement is in evidence.

Even if I accept that the parties had entered into a separate contract for additional cable services, beyond what is shown or implied within the tenancy agreement, the precise terms of this verbal agreement are not clear. Section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that the term for additional payment for extra cable service is not sufficiently clear to enforce.

Based on a lack of evidence, I further find that the parties never successfully changed the original tenancy agreement to exclude free provision of cablevision, nor to add a new enforceable term for payment of enhanced cable. The only indication in the tenancy agreement is that cablevision *is* included in the rent.

The landlord's evidence also confirms that the cable services were shared by the landlord. I find that the matter of what proportion of the bill, if any, the tenants were supposed to pay, was also never established under any enforceable agreement.

However, based on the evidence, I do find that the tenants acknowledged in written correspondence to the landlord that the tenants owe the landlord \$350.00. Accordingly, I hereby grant a monetary order in favour of the landlord for this amount.

This order must be served on the tenants and may be enforced through Small Claims Court if necessary

Based on the evidence before me, I hereby grant the tenants' application and order that the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled and of no force nor effect.

Each party is responsible to pay their own costs of the applications.

Conclusion

The tenants are successful in their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord is partially successful in the cross-application and is granted a monetary order for the amount acknowledged by the tenant as owed. The remainder of the landlord's application is dismissed with leave.

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 4, 2015

Residential Tenancy Branch

