



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated January 11, 2015 with effective Stated as January 20, 2015.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. 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.

At the outset of the hearing, the tenant advised that they had moved out of the rental unit on January 30, 2015. The tenant is no longer disputing the eviction, but still disputes the landlord's monetary claim for alleged rental arrears.

Preliminary Matter: Service of Respondent's Evidence

The landlord testified that they sent their evidence to Residential Tenancy Branch on January 28, 2015 and served this evidence to the tenant by posting it on the tenant's door. However, the tenant testified that no evidence from the landlord was received.

The Residential Tenancy Rules of Procedure requires that all evidence must be served at least (5) days before the dispute resolution proceeding. The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "*at least*" then the first and last days must be excluded.

In addition to the above, section 90 of the Act provides a document posted on the door is deemed to have been served, on the 3rd day after it is attached. Given the above, I find that documents posted on the tenant's door on January 28, 2015 are deemed by the Act to have been served on January 31, 2015.

I find that, excluding the first and last days, the landlord's evidence was only served 3 days before the hearing.

I accept the tenant's testimony that she had already vacated the unit by January 30, 2015 and find that the tenant was no longer living in the rental unit at the time the landlord's evidence was deemed to be served on the tenant.

Based on the evidence, I find that the landlord's evidence was not served on time and in the proper manner under the Act. Therefore I decline to accept or consider the landlord's evidence as it was not properly served on the other party. However, verbal testimony from both parties will be considered.

Issue(s) to be Decided

Does the tenant owe the landlord rental arrears?

Background and Evidence

Submitted into evidence was a copy of the 10Day Notice to End Tenancy for Unpaid Rent dated January 11, 2015, indicating that rent of \$650.00 was due on January 8, 2015 but had not been paid. The landlord testified that the Notice was served by posting it on the tenant's door on January 11, 2015. Under the legislation the deemed service date for this document is January 14, 2015.

The landlord testified that, when the parties met on December 8, 2014, the tenant agreed to rent the unit immediately as of that date and was given the key to move in. The landlord stated that no written tenancy agreement was signed and no move-in condition inspection was conducted on December 8, 2014. According to the landlord, the \$650.00 initially paid by the tenant was to cover rent for the period from December 8, 2014 to January 7, 2015. The landlord testified that, when the tenant then failed to pay the \$650.00 rent due on January 8, 2015, a 10 Day Notice for Unpaid Rent was served.

The tenant disputed the date that the landlord is alleging to be the start date for the tenancy. The tenant testified that in December she was still living outside the area and planned to relocate to the area in January 2015. According to the tenant, in preparation for relocating, she met with the landlord to view the rental unit and the parties reached an agreement on December 8, 2014 for the tenant to take occupancy in the unit in January 2015. The tenant stated that she paid the January rent of \$650.00 in advance and gave the landlord a security deposit of \$325.00 and pet damage deposit of \$100.00 in anticipation of her January move-in date.

The tenant stated that she was shocked that the landlord is claiming unpaid rent for January 2015. The tenant stated that she had filed to dispute the landlord's 10 Day Notice, but later decided to accept the eviction and vacate the unit. The tenant testified that she moved out on January 30, 2015.

The tenant now only disputes the monetary claim of the landlord for \$650.00 rent for the period from January 8, 2015 to February 7, 2015. The tenant testified that the tenancy agreement with the landlord was for a move-in date of January 1, 2015 and the \$650.00 she paid to the landlord on December 8, 2014 was the rent payment allocated to the first month of the tenancy, that being January 2015. As far as the tenant is concerned, her rent is paid in full to the end of January 2015 and absolutely no arrears are owed.

Analysis

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 Regulation or the tenancy agreement.

In regard to the landlord's claim for utilities, Section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise under the Act or a tenancy agreement. (my emphasis).

I find that the date that a particular tenancy officially begins and the day of the month that the payment of rent is due must be terms contained in the tenancy agreement between the landlord and a tenant. In fact, section 13(2)(f) of the Act specifically provides that a tenancy agreement must contain agreed-upon terms respecting the date upon which the tenancy officially starts and the day in each month that the rent is due.

Section 13(1) of the Act provides that a landlord must prepare in writing every tenancy agreement entered into. I find that the landlord did not comply with the Act in this regard and section 13(3) of the Act also requires that the landlord give the tenant a copy of their agreement within 21 days.

I find that the tenancy contract between this landlord and this tenant was only a verbal agreement and the parties are now in dispute over what was agreed upon as the starting date for the tenancy.

If I accept the landlord's testimony that the tenancy began on December 8, 2014, when the parties met and the tenant paid the deposit and the first month's rent, I would expect that the landlord would immediately do a move-in condition inspection on or before that date as required under the Act. The Act and the Regulation provides that a condition inspection must be done at the start of the tenancy before the tenant moves their possessions into the unit.

I find that the landlord ignored numerous sections of the Act as outlined above and this has affected the landlord's testimony alleging that the tenancy began on December 8, 2014. For this reason, I find it more likely than not on a balance of probabilities that the tenancy did not actually commence until December 30th, 2014. Therefore the rent paid by the tenant was applicable to the month of January 2015 and I find that the tenant was never in arrears for rent.

Accordingly, I find in favour of the tenant and find that the 10 Day Notice to End Tenancy for Unpaid Rent must be cancelled and of no force or effect because the monetary amount shown as arrears on the Notice was not owed. However, this tenancy has ended anyway as the tenant chose to move out of the unit.

During the hearing, the tenant asked that her application be amended to include a request for a refund of her security deposit and pet damage deposit from the landlord. This request is denied. I find that a claim for return of the security and pet deposits was never anticipated by the respondent and the tenant's request is premature.

However, the tenant provided a forwarding address to the landlord during the hearing and the landlord confirmed that this was received and written down. The parties confirmed that they are aware that the tenant's security deposit must now be dealt with in compliance with section 38 of the Act.

I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent is cancelled and of no force or effect. As the tenant is successful in this application, I hereby grant the tenant a monetary order of \$50.00 in reimbursement for the cost of the application.

Conclusion

The tenant is successful in the application and the Ten Day Notice to End Tenancy for Unpaid Rent is cancelled and of no force or effect. The tenant is granted a monetary order reimbursing the tenant for the cost of the application.

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 04, 2015

Residential Tenancy Branch

