



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 for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The landlord and one of the tenants (hereafter referred to as the first tenant) attended the hearing and each gave affirmed testimony. The second tenant did not attend. 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

Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2013 and expires on March 31, 2015. Rent in the amount of \$1,000.00 per month is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$500.00 which is still held in trust by the landlord. A written tenancy agreement exists, however it has not been provided for this hearing.

The landlord also testified that the tenants are in arrears of rent the sum of \$2,125.00. The landlord was away from October 15, 2014 till January 21, 2015 and introduced the tenants to the landlord's son who would be collecting rent. The landlord was in touch with the son who told the landlord that rent had not been paid. He knocked on the tenants' door sometime in December but guesses that no one answered. The tenants pay rent individually, and the first tenant is in arrears \$125.00 for November, 2014 and

the second tenant is in arrears \$2,000.00 for November, 2014 through February, 2015. A government ministry pays a portion of rent for both tenants, and in October, 2014 the landlord received \$375.00 for the second tenant and the landlord received \$125.00 in cash but has received nothing since. The ministry cheque and the cash were deposited to the landlord's bank on October 2, 2014.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. The notice is dated February 3, 2014 and contains an expected date of vacancy of February 13, 2015 for \$2,625.00 in unpaid rent that was due on February 1, 2015 and unpaid utilities in the amount of \$297.33 following written demand on February 3, 2015. The notice was personally given to the first tenant on February 3, 2015. The tenant then went to the ministry and a new cheque for \$500.00 was received the day before this hearing. The landlord testified that \$2,625.00 was owed at the time the notice was issued, and now \$2,125.00 is still outstanding.

The tenant testified that he was not made aware that any rent was overdue until he received the notice. The ministry mails the rent cheques directly to the landlord and the landlord was away for about 6 months. The tenant does not know of any rental arrears for November, 2014 owed by him.

The tenant further testified that he has never met the landlord's son. On February 2 or 3, 2015 the landlord arrived at the rental unit saying money was overdue and the tenant was surprised. The tenant went to the ministry right away and the second tenant said he would as well, but the first tenant has not seen the second tenant since. The ministry paid the landlord \$500.00.

Analysis

Firstly, I accept that the date of issuance on the notice (February 3, 2014) is an error and should read February 3, 2015.

Where a tenant disputes a notice to end the tenancy given by a landlord, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*. No one has provided me with a copy of the tenancy agreement, so I cannot be satisfied if each tenant is to pay half of the rent or if both tenants are responsible for all of the rent. The first tenant disagrees that he owes any rent but does not have any information about what is owed by the second tenant. The landlord has not provided any receipts or ledgers or any other evidence that the first tenant is in arrears, nor was the landlord's son called to testify. The second tenant didn't show up

for the hearing, and the first tenant has no idea what may be owed by the second tenant, nor does he agree that he owes \$125.00 from November, 2014.

Further, the notice states that the tenants were given a written demand for the payment of utilities the same day as the issuance of the notice. The *Act* states that a landlord may treat unpaid utilities the same as unpaid rent but not until 30 days after the landlord gives written demand for the payment of utilities. The landlord has not done that and has not provided any evidence of utilities.

In the circumstances, I am not satisfied that the landlord has established that the notice was issued in accordance with the *Act*. I hereby cancel the notice, and the tenancy continues. If rent remains unpaid, the landlord is at liberty to issue another notice, but must be prepared to prove which tenants are responsible for what amount of rent.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2014 is hereby cancelled and the tenancy continues.

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 20, 2015

Residential Tenancy Branch

