



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, CNR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied requesting more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to cancel the Notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants applied requesting more time to apply to cancel the Notice issued and received on February 20, 2015. The tenants applied to cancel the Notice on February 26, 2015 via an on-line application. The tenants believed they had applied on time but asked for more time, on advice given. During the hearing I explained that a tenant does not need to dispute a Notice if the rent has been paid and although it appeared the application may have been made on time that I would deal with the request in my decision.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 20, 2015 be cancelled?

Background and Evidence

The tenants supplied evidence of a past hearing and review consideration decision issued on January 7 and January 26, 2015 respectively. These were before the landlord. On January 7, 2015 the arbitrator found that the individual who issued the February 20, 2015 Notice ending tenancy was a landlord, jointly with his estranged spouse. This finding was based on the fact that the male is a part-owner of the rental property. Rent was found to be \$4,300.00 per month. There is no previous finding in relation to the due date of rent.

On January 7, 2015 it was determined that the landlord present at the hearing (the husband of the female joint-landlord) could not prove what rent payments may have

been made to his joint-landlord. The arbitrator found that effective December 24, 2014 there were no longer any rent arrears. This finding was based on the female joint-landlord's written statement confirming no rent was owed, to December 24, 2014.

The landlord applied for review consideration of the January 7, 2015 decision which was considered on two grounds; new and relevant evidence and fraud. The review consideration application was dismissed.

A complete copy of the tenancy agreement has not submitted by the parties for this hearing or at the previous hearing. The tenants have supplied the final, signature page of the tenancy agreement, signed on August 7, 2013.

The tenant stated that the tenancy commenced on September 1, 2013. Since the start of the tenancy the rent has been due and paid on the first day of each month; not the 15th day as indicated on the Notice ending tenancy issued by the male landlord. The landlord believes rent is due on the 15th day of each month; however he does not receive the rent payments. Neither party had a complete copy of the tenancy agreement, for reference during the hearing.

The tenant said that on January 20, 2015 he, his co-tenant and the female landlord met to discuss the terms of the tenancy agreement. The tenant states that on January 20, 2015 there was absolute verbal agreement by the female landlord that rent would be reduced to \$3,400.00 per month. The landlord agreed to this rate of rent to make allowances for the tenants' inability to pay a higher rent. The tenants then provided the female landlord with eight post-dated cheques in the sum of \$3,400.00 each. The tenants submitted copies of three cheques that have been issued to the female landlord in the sum of \$3,400.00 and successfully processed:

- January 1, 2015;
- January 26, 2015; and
- March 1, 2015.

The tenant's gave the landlord February rent early; hence the January 26, 2015 payment. The tenant said April rent has now been paid. These payments were made with the agreement of the female landlord and altered the rent term of the tenancy agreement signed on August 7, 2013.

The male landlord described a relationship with his joint-landlord that is estranged. There was no dispute that the female landlord has handled all affairs related to the tenancy and that the male landlord has played no role in the day-to-day management of the tenancy. The male landlord said that the tenants did not pay \$8,600.00 of rent owed in the past; even though the January 7, 2015 decision determined that no past rent was due.

The landlord wants the tenants to pay one-half of the rent to him and one-half to the female landlord.

The landlord said that he did meet with the female landlord and legal counsel several months ago. During this meeting the female landlord told him that she was receiving reduced rent and that it was better than getting nothing from the tenants. The tenants had been arrears in the past so she accepted the rent cheques the tenants offered.

Neither party asked the female landlord to attend the hearing. The male landlord does not know how to reach her; the tenants responded to the Notice ending tenancy by serving only the landlord named on the Notice ending tenancy.

The 10 day Notice to end tenancy for unpaid rent had an effective date of February 30, 2015. The Notice indicated that it would be automatically cancelled if the landlord received \$12,900.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord confirmed that the Notice was issued for unpaid rent owed for December 2014, and January and February 2015.

Analysis

I find that the tenants applied to dispute the Notice one day beyond the required five day time-period. They received the Notice on February 20, 2015 and disputed the Notice on February 26, 2015. However, I will deal with the effect of the timing of application in relation to the force of the Notice. A tenant is required to dispute a Notice if any overdue rent has not been paid within five days of receipt of the Notice. If the rent has been paid that has the effect of nullifying the Notice.

First, I have considered the day rent is due. From the evidence before me I find that rent is due on the 1st day of each month. Even if the signed tenancy agreement, which was not before me, indicates the term to be the 15th day of each month, the tenants have paid rent on the first day of each month throughout this one and one-half year tenancy. The male landlord had no evidence that rent was paid otherwise. Therefore I find that the landlord has accepted the first day of each month as the rent payment day and can no longer rely upon a term that may require payment on another day. The one prior Notice to end tenancy indicating rent was due on the 15th day of the month does not change my position, as that Notice was issued by the landlord who has not been receiving rent payments.

There was no dispute that the relationship between the two landlords is estranged. The male landlord has no control over the decisions made by the female landlord and has, for the majority of the tenancy, apparently left those matters to her discretion. The confirmed absence of the male landlord in any of the day-to-day communication with the tenants leaves me to find, on the balance of probabilities, that it is the female landlord who has managed the tenancy and made decisions related to tenancy issues.

The male landlord is not receiving any of the rent payments that are being made to the female landlord. This is obviously frustrating the male landlord, who has taken steps to obtain what he believes is the rent owed by the tenants. The request for an Order that equal rent payments be made to each landlord is not contemplated by the Act. The Residential Tenancy Act does not provide authorization to issue orders related to landlord conflict; only landlord and tenant issues may be addressed. The tenants are not unaware of the conflict that exists between the two landlords and described the relationship as causing problems with the tenancy.

I have considered the tenant's submission that the female landlord has altered the rent from \$4,300.00 to \$3,400.00 effective January 2015 against the male landlord's stance that rent remains at the sum recorded in the 2013 signed tenancy agreement.

I have also considered the credibility of the parties in coming to a conclusion in relation to rent owed. In the absence of the female landlord I have weighed the testimony of the male landlord and the tenant. I find the male landlord's submissions believable; that the female landlord was accepting decreased rent simply because that was all she could expect the tenants would pay. However, I find it is just as plausible that the female landlord has agreed to reduce the rent owed. This is confirmed by the acceptance of the eight post-dated rent cheques and the absence of any communication by the female landlord that she disputes the sum of rent being paid.

Given the obvious confusion that has been created by the lack of communication and consistent approach by the landlords I find that rent paid from January to March 2015 inclusive, has been fully paid. This is based on the processed cheques supplied by the tenants as evidence. The Notice ending tenancy failed to take these payments into account. Payment of April 2015 rent will be confirmed by the successful processing of that cheque given to the female landlord.

Section 62(3) of the Act provides:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies

Therefore, pursuant to section 62(3) of the Act I Order that effective May 1, 2015 rent will be \$4,300.00. This is the sum set out in the written contract between the parties. When there is a dispute in relation to terms of a tenancy I must rely upon the agreed written term contained in the contract.

If the female landlord intends to allow the tenants to continue to pay rent in the sum of \$3,400.00, as the tenants say she is willing to do, the female landlord must issue the tenants a dated, written and signed notice confirming such a rent reduction. If this confirmation is not obtained by May 1, 2015 I find that the tenants must pay the equivalent of \$4,300.00 rent commencing May 1, 2015 until such time written confirmation is provided. The female landlord's written confirmation of a rent reduction will then place the tenants in the same position that they say has been previously approved by that landlord.

If a rent reduction confirmation is provided by the female landlord I find, pursuant to section 62(3) of the Act that any future rent increase imposed or made by mutual agreement, must be issued in accordance with the legislation.

I have determined that the tenants paid the overdue rent to March 20, 2015. Therefore, pursuant to section 46(4) of the Act, I find that the 10 day Notice to end tenancy for unpaid rent issued on February 20, 2015 is of no force or effect. This tenancy will continue until it is ended in accordance with the legislation.

Conclusion

The 10 day Notice ending tenancy for unpaid rent issued on February 20, 2015 is of no force and effect.

All rent to March 2015, inclusive is fully paid.

Until the landlord issues a written confirmation of a rent reduction, effective May 1, 2015 rent is \$4,300.00 per month and each month thereafter.

Once the rent reduction is confirmed, as Ordered, any future rent increase must comply with the legislation.

Rent is due on the first day of each month.

This decision is final and binding and 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: April 09, 2015

Residential Tenancy Branch

