



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR MNR MND FF
Tenants: CNR OLC FF

Introduction

This hearing was convened as a result of the cross-applications for dispute resolution seeking remedy under the *Residential Tenancy Act* (the “*Act*”) by the parties. The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for damages to the unit, site or property, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 21, 2015, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Both parties stated that they received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matter

As the tenants failed to indicate in their application what section of the *Act*, regulation or tenancy agreement they were seeking an order for the landlord to comply with, I dismiss that portion of their application due to insufficient details.

Issues to be Decided

- Should the 10 Day Notice dated August 21, 2015 be cancelled or upheld?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Should either party recover the cost of their filing fee?

Background and Evidence

The parties agreed that a month to month tenancy began on December 1, 2008. Monthly rent has been \$1,500 per month since the start of the tenancy, and is due on the first day of each month. The parties agreed that the tenancy agreement was made verbally and not in writing.

The landlord served a 10 Day Notice dated August 21, 2015, which the tenants confirmed they received on August 24, 2015 by registered mail. The tenants disputed the 10 Day Notice on August 26, 2015 which is within the 5 day timeline provided for under section 46 of the *Act*. The amount listed as owed is \$9,750 due January 1, 2010. The effective vacancy date of the 10 Day Notice is listed as September 5, 2015.

During the hearing, the parties agreed that the tenants did not owe any rent prior to January 2010 as the tenants submitted receipts for their payments to the landlord in evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As both parties acknowledged that no rent was owed prior to January 2010, the 10 Day Notice dated August 21, 2015 is **cancelled**. I make no finding on the amount of rent owing since January 2010, if any, as the 10 Day Notice alleges that the amount listed as owing was owed as of January 1, 2010, which is not correct given the above.

Based on the above, I **dismiss** the landlord's application. I note that while I find that no rent is owed prior to January 2010, I have not made any findings regarding an amount owed in unpaid rent, if any, after January 2010 as the 10 Day Notice before me in this matter was specific to rent owed as of January 1, 2010. In other words, the landlord is at liberty to reapply for unpaid rent owed since January 2010, if any.

I ORDER that the tenancy continue until ended in accordance with the *Act*.

As the tenants' application has merit, I **grant** the tenants the recovery of the cost of their filing fee in the amount of **\$50** by way of a one-time rent reduction in the amount of \$50 from a future month's rent in full satisfaction of the recovery of the filing fee.

As the landlord's application was dismissed, I do not grant the landlord the recovery of the cost of the filing fee.

Conclusion

The landlord's application is dismissed. I find that no rent is owed prior to January 2010. I have not made any findings regarding unpaid rent owed since January 2010, if any. The landlord is at liberty to reapply for unpaid rent owed since January 2010, if any.

The tenants' application is successful. I authorize the tenants to deduct \$50 from a future month's rent, on a one-time basis, in full satisfaction of the recovery of the filing fee pursuant to section 72 of the *Act*.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: October 26, 2015

Residential Tenancy Branch

