



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC CNR PSF MT FF

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated September 11, 2015, for more time to make an application to cancel a notice to end tenancy, for an order directing the landlord to provide services or facilities required by law, and for the recovery of the filing fee.

Tenants A.R. and T.H. attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on September 23, 2015. The tenants provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the service address for the landlord provided by the landlord on the 10 Day Notice dated September 11, 2015.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenants testified that the registered mail package was returned as "unclaimed" as of October 31, 2015, which is supported by the online registered mail tracking website. I find the landlord was duly served on the fifth day after mailing on September 28, 2015, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent landlord to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

Preliminary and Procedural Matter

Although a portion of the tenants' application was for an order directing the landlord to provide services or facilities required by law, I find it clear from the tenants' application that they intended to apply for an order directing the landlord to comply with the *Act*,

regulation or tenancy agreement. As a result and pursuant to section 64(3) of the *Act*, I amend the tenants' application from a request for an order to provide services or facilities required by law, to a request for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

Issues to be Decided

- Should the 10 Day Notice dated September 11, 2015 be cancelled?
- Have the tenants provided sufficient evidence that an order directing the landlord to comply with the *Act*, regulation or tenancy agreement is required under the *Act*?
- Are the tenants entitled to the recovery of their filing fee under the *Act*?

Background and Evidence

The tenants testified under oath that a fixed term tenancy began on February 1, 2015 and is scheduled to expire on September 1, 2016 and that four tenants in common are renting the rental unit which is a house. The tenants testified that each of the original four tenants, A.R., S.S., L.M., and T.H. signed a separate tenancy agreement that indicates that monthly rent of \$75 per month is due on the first day of each month to the landlord. The total of the four monthly rent payments equal \$300 per month. The tenants stated that a total security deposit of \$150 was paid by the four tenants in common at the start of the tenancy. The tenants also stated that in May of 2015, tenants S.S. and L.M. vacated the rental unit. The tenants testified that the payment of rent was arranged from the start of the tenancy by the landlord attending the rental unit on the first day of each month when the tenants would hand deliver a money order to the landlord.

On May 1, 2015, the tenants were involved in a dispute resolution hearing to which the landlord did not attend the hearing. The file number of that decision is referenced on the front page of this decision for ease of reference. In the May 1, 2015 decision, an arbitrator canceled a 10 Day Notice dated May 11, 2015. The arbitrator also ordered that the tenants may change the locks to the rental unit due to the landlord breaching section 29 of the *Act*. In addition, the arbitrator ordered the landlord to accept the monthly rent when offered by the tenants, and by issuing rent receipts when rent is paid in cash. Finally, the tenants were given a one-time deduction of \$50 from future rent to cover the cost of the filing fee.

On page 3 of the May 1, 2015 decision, the arbitrator writes:

“...The landlord cannot refuse to accept rent and then issue a Notice to End Tenancy for nonpayment of rent...”

[reproduced as written]

The tenants submitted a copy of a 10 Day Notice dated September 11, 2015, which indicates that \$1,050 is owed in unpaid rent as of September 1, 2015 comprised of 7 months of rent at \$75 per month per tenant. The tenants stated that the 10 Day Notice is invalid as they have the money orders for all of the months and that the landlord has stopped coming to the rental unit to accept their money orders since the last hearing on May 1, 2015. The tenants provided a photocopy of the money orders in evidence.

The tenants testified that since the last hearing on May 1, 2015, the landlord has also turned off the heat in the rental unit in May 2015, which is provided by way of a furnace as the only heat source. The tenants are requesting an order that the landlord repair and/or turn on the heating in the rental unit as heat is included as part of their tenancy agreement.

Analysis

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

10 Day Notice issued by landlord – Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. In the matter before me, I accept the undisputed evidence of the tenants that no rent was owed by the tenants as alleged in the 10 Day Notice dated September 11, 2015. Therefore, **I cancel** the 10 Day Notice dated September 11, 2015.

I do not find it necessary to consider if the tenants disputed the 10 Day Notice on time as the 10 Day Notice was not valid to begin with. As the 10 Day Notice is an invalid notice under the *Act* and is of no force or effect, **I ORDER** the tenancy to continue until ended in accordance with the *Act*. The landlord is advised that the tenants have the rent payment money orders at the rental unit available to be picked up, which was the arrangement at the start of the tenancy and will continue for the remainder of the tenancy or until such time that an arbitrator orders a different payment arrangement.

I CAUTION the landlord not to issue invalid notices to end a tenancy in the future. I note the landlord was already advised of such in the May 1, 2015 decision. Should the

landlord continue to do so, the tenants are at liberty to apply for compensation under the *Act*.

Rental Unit Heating – I accept the undisputed evidence of the tenants that the landlord turned off the only heating source in the rental unit in May 2015, which is a furnace. I also accept that heat is included in the monthly rent. Therefore I order the following:

I ORDER the landlord to immediately turn on the heating to the rental unit and if the furnace requires repair to ensure proper functioning, to have a qualified service technician repair the furnace at the landlord's expense no later than **November 27, 2015 by 1:00 p.m.** and to ensure a qualified furnace repair technician has provided documentary evidence in support the furnace is fully operational.

Should the landlord fail to comply with my Order, I authorize the tenants to pay **\$0** in rent for the remainder of the tenancy or until such time that the landlord submits an application to the Residential Tenancy Branch providing sufficient evidence that my Orders and the Orders made by the arbitrator in the May 1, 2015 decision have been fully complied with, and an arbitrator reinstates the monthly rent.

I authorize a one-time rent reduction of **\$50**, comprised of \$25 for each of the applicant tenants in common, T.H and A.R. I note that the other two tenants in common have vacated the rental unit in May of 2015.

I CAUTION the landlord that failing to comply with an order of an arbitrator is a serious matter which could lead to administrative penalties under the *Act* and that carry with it monetary penalties up to and including \$5,000 for each day the contravention or failure continues.

Conclusion

The tenants' application is successful.

The 10 Day Notice dated September 11, 2015 is cancelled as it is invalid and is of no force or effect. The tenancy has been ordered to continue until ended in accordance with the *Act*.

The landlord has been ordered to immediately turn on the heating in the rental unit and if the landlord fails to do so by November 27, 2015 by 1:00 p.m., the tenants are entitled to pay \$0 for the remainder of the tenancy or until such time that the landlord submits an

application with sufficient evidence that all previous orders referred to in this decision and the May 1, 2015 decision have been fully complied with, and an arbitrator reinstates the monthly rent.

Tenants in common A.R. and T.H. are granted a one-time rent reduction in the amount of \$50, comprised of \$25 each as they have separate tenancy agreements, in full satisfaction of the recovery of the cost of the filing fee.

The landlord has been cautioned not to issue invalid notices to end tenancy and that should she continue to do so, the tenants are at liberty to apply for compensation under 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: November 20, 2015

Residential Tenancy Branch

