



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Home Life Glenayre Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

An agent for the landlord and the tenant attended the hearing and the tenant called one witness, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

The tenant advised that a copy of the notice to end the tenancy was provided to the Residential Tenancy Branch, however a copy is not on file. The copies of evidence provided by the tenant appear to be mixed up, and therefore I accept that a copy of the said notice was provided but is not in the file due to no fault of the tenant. The landlord did not provide any evidentiary material in advance of the hearing, but agreed to provide a copy of the said notice by facsimile after the hearing had concluded. As of the date of this Decision, no copy has been received.

No other issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, I found that the tenant's claim for monetary compensation is not sufficiently related to the primary dispute, being the notice to end the tenancy, and I severed the monetary claim from the primary dispute. The tenant's application for monetary compensation is hereby dismissed with leave to reapply. I make no findings of fact or law with respect to the merits of that matter.

Issues to be Decided

The issue remaining to be decided is:

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

Background and Evidence

The landlord's agent testified that this tenancy began on June 1, 2014 and became a month-to-month tenancy after the first year. The tenant still resides in the rental unit. Rent in the amount of \$775.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$387.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 144 units within an apartment complex, and a copy of the tenancy agreement has been provided by the tenant.

The tenant fell into arrears of rent and on November 5, 2015 another agent of the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) by posting it to the door of the rental unit. The landlord's agent testified that the notice is dated November 5, 2015 and contains an effective date of vacancy of November 18, 2015 for unpaid rent in the amount of \$775.00 that was due on November 1, 2015.

The tenant made payments after the notice was issued. On December 8, 2015 the landlord received 3 bank drafts for \$375.00, \$775.00 and \$775.00. The landlord's agent is not certain whether or not the building manager received them or if the tenant dropped them off at the manager's office in the drop slot where rent is usually paid. No receipts were issued.

The landlord's agent also acknowledged 2 emails provided by the tenant, wherein another agent of the landlord asks for the tenant to put in writing the tenant's concerns about the payment of rent and the reply by the tenant, but the landlord's agent also testified that there was no agreement made for late payments of rent. The request wasn't approved and the notice to end the tenancy was issued.

No rent has yet been paid for January, 2016, and the landlord's agent orally requested an Order of Possession.

The tenant testified that there was an agreement. The tenant talked to another agent of the landlord in August, 2015 who asked the tenant to send an email about expectations for the payment of rent due to medical and financial issues of the tenant,

and the tenant did so. The agent also told the tenant that the landlord would be willing to work with the tenant, acknowledging that sometimes people have problems and as long as the tenant kept in touch, there wouldn't be a problem. The tenant paid \$400.00 on October 4, 2015 and contacted the agent to give the heads-up about when the balance could be paid. In order to get EI payments, the tenant had to get medical forms completed by a doctor and processed, and the agent was advised that the rent would be late. Then the forms had to be done again and the tenant again contacted the agent, keeping the agent up-to-date all along, and the tenant did exactly what she promised.

On December 4, 2015 the tenant and her husband drove to the landlord's office and gave the 3 bank drafts to the secretary for \$375.00, \$775.00 and \$775.00 for the balance of October's rent and rent for November and December, 2015. No receipts were given, but the tenant has copies of the bank drafts.

The tenant's witness testified that from the documentation he has seen, the tenant's testimony is true.

Analysis

Where a tenant disputes a notice to end a tenancy, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*.

I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The parties agree that the tenant paid the rental arrears contained in the notice in December, 2015 as well as the rent for the following month and no receipts were issued.

A landlord should never refuse rent payments given by a tenant, however where rent is accepted after the effective date of a notice to end the tenancy for unpaid rent, the landlord must inform the tenant that the money is being received for use and occupancy only and doesn't serve to reinstate the tenancy. In this case, the landlord accepted the rent and also accepted rent for the following month after the effective date of the notice and did not provide the tenant with a receipt or some other notice that the acceptance of rent did not serve to reinstate the tenancy. Therefore, I find that the landlord has reinstated the tenancy, and the notice is cancelled.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2015 is hereby cancelled and the tenancy continues.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply. I have made no findings of fact or law with respect to the merits 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: January 13, 2016

Residential Tenancy Branch

