



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Satgur Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC

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 the tenancy for unpaid rent or utilities and for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Both tenants and the named landlord attended the hearing, and the landlords were also represented by an agent. The named landlord and both tenants each gave affirmed testimony and the landlord called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the testimony and evidence 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

- Have the landlords established that the notice to end the tenancy for unpaid rent or utilities was issued in accordance with *the Residential Tenancy Act*?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that he does not know when the tenancy began, but is on a month-to-month basis and the tenants still reside in the rental unit. The tenants had been managers of the building, but their contract was cancelled by new owners. No written tenancy agreement exists, nor were any security deposit or pet damage deposits collected, however rent in the amount of \$900.00 per month is payable on the 1st day of each month.

On December 15, 2015 new landlords purchased the rental building while the tenants were employed as resident managers for the previous owners and were also tenants. The tenants were advised on November 15, 2015 that their services were no longer required effective December 15, 2015. A copy of a letter from the previous landlord to the new landlord has been provided which is dated January 19, 2016 and confirms that the employment of the tenants was terminated effective December 15, 2015. The next day, the landlord told the tenants they should continue to provide services as consultants for one more month, and that the current rent of \$450.00 was payable to the end of January, 2016. On January 27, 2016 the landlord personally handed a letter to one of the tenants advising the tenants that rent for February was \$900.00 and a security deposit of \$450.00 was required by February 1, 2016. The tenants paid \$450.00 on February 1, 2016, and gave no indication whether it was for the security deposit or partial rent.

The landlord testified that on February 2, 2016 the landlord personally served to one of the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated February 2, 2016 and contains an effective date of vacancy of February 13, 2016 for \$900.00 unpaid rent that was due on February 1, 2016.

The tenants also paid \$450.00 on March 1, 2016.

The landlord's witness was employed by the previous landlord company and testified that the tenants have been employed as resident managers of the rental complex for about 5 years. A termination notice was given to them in November, 2015 indicating that the building was sold and employment was to be terminated roughly the 15th of December, 2015. At the beginning of the tenancy, no deposits were paid by the tenants and no contract was drawn up. It was before the witness' time, however the witness believes that a representative of the landlord company would have communicated how rent works and the discount the tenants would receive from the rent as compensation for their services. There is nothing in writing that the witness is aware of.

Copies of Records of Employment have been provided and the witness testified that the taxable benefit shown on one in the amount of \$250.00 represents the discount on rent. Rent was \$900.00 per month, and one tenant received a \$250.00 taxable benefit and the other received a \$200.00 taxable benefit, which ended with termination of their employment. The balance of \$450.00 per month for rent was paid by the tenants by cash or cheque each month.

The tenant testified that they were hired and the landlord's representative at the time said that rent was \$450.00 after job duties. If he had said that rent was \$900.00 per

month, the tenants would not have been able to afford it and would not have agreed to it. The tenancy and the duties as resident managers started on February 1, 2011. No agreements were signed and no inspection of the rental unit was completed.

The tenants collected rent from other tenants, and they ranged from \$800.00 to \$900.00 per month. Long-term tenants still pay \$800.00 per month.

Three weeks before the possession date of the purchase of the rental building, the tenants received a termination letter dated November 23, 2015 but were lead to believe that the same services may be required by the new owner. The tenant called the new owner and the parties met. The new owner said he would hire his own resident manager and asked that the tenants provide a list of repairs to be done to all units. The tenant asked to stay for a month or more until the tenants found another job and proposed assisting with the transition of management if the landlord would help the tenants by accepting the rent they had been paying. The landlord replied that he didn't know. Prior to the possession date, the tenant called again about a tour and reiterated again to assist with transmission and pay the same rent. The landlord replied that the parties would help each other. The tenants provided written reports and her husband worked very hard creating lists and making repairs.

There was no written notice of rent increase. The Residential Tenancy Branch said that signing a new tenancy agreement was not necessary after 5 years, and a 100% increase is unlawful. The tenant submits that when the landlord purchases a rental building the landlord inherits the contract. Since no notice of rent increase was received and the tenants are now tenants, the rent should remain the same and increased the same as for other tenants. The tenants paid rent in the amount of \$450.00 for each of the months of January, February and March, 2016. The tenant didn't know what the taxable benefit meant on the payroll stub, but every month the tenants paid \$450.00 for rent.

Analysis

Firstly, with respect to the landlord's letter to the tenants seeking a security deposit, the *Residential Tenancy Act* states:

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;

- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The landlord inherited the tenants when the building was purchased and may not now require the tenants to pay a security deposit.

I have reviewed the evidentiary material, particularly the payroll stubs. The landlords' position is that given that the pay stubs show taxable benefits of \$200.00 and \$250.00 per month from the 2 tenants, totalling \$450.00 per month, it is established that the tenants agreed to \$900.00 per month for rent at the beginning of their tenancy and employment. The tenants dispute that stating that they never agreed to a rental amount of \$900.00 per month because they couldn't afford that, and the tenants paid \$450.00 per month for 5 years. There is no dispute to the amount paid by the tenants each month. However, I am satisfied that the tenants agreed to \$450.00 per month in addition to their payroll deductions of \$450.00 per month, which equals \$900.00 per month.

The landlords collected \$450.00 for rent for the month of March, 2016, after the effective date of vacancy contained in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities without notifying the tenants by way of a notation on a receipt or any other method that the landlords were receiving the money for use and occupancy only and that it did not serve to reinstate the tenancy. Therefore, I find that the landlords have reinstated the tenancy, and I cancel the notice.

With respect to the tenants' application for an Order that the landlords comply with the *Act*, regulation or tenancy agreement, having found that the landlords are entitled to an agreed rate of \$900.00 per month for rent, I dismiss that portion of the tenants' application.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2016 is hereby cancelled and the tenancy continues.

The tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: March 24, 2016

Residential Tenancy Branch