



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions respecting the evidence and testimony 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

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 21, 2013 and reverted to a month-to-month tenancy after the first year. The tenants still reside in the rental unit. Rent in the amount of \$960.00 per month was payable at the beginning of the tenancy which was raised to \$980.00 per month effective March 1, 2016. The landlord is the new property manager for the complex, and believes that at the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$480.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 24 units in an apartment complex. A copy of the tenancy agreement has not been provided.

The tenants share the rent, and one tenant's share is paid to the landlord directly from a government Ministry. The tenants fell into arrears of rent, and currently owe \$480.00 for February, 2016 and \$490.00 for March, 2016 as well as the \$10.00 increase for the tenant's

share that the landlord receives from the Ministry; the landlord received \$480.00 for March, 2016.

The landlord personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 5, 2016. Both pages of the 2 page form have been provided. The notice is dated February 5, 2016 and contains an effective date of vacancy of February 15, 2016 for \$480.00 of unpaid rent that was due on February 1, 2016.

The tenants have provided the landlord with a written payment plan, however the first payment is March 23, 2016 which the tenants have not paid, and the landlord does not accept will be adhered to for the future payments.

The landlord testified that the tenants have not paid any rent since the issuance of the notice, and are now in arrears the sum of \$980.00, although the landlord spoke to one of the tenants on March 23, 2016. At that time the tenants advised that the tenants would be able to come up with April's rent, but not February or March. The landlord felt sorry for their position and told the tenant to hang onto it until the hearing. The landlord denies refusing rent money at any other time from the tenants.

The first tenant (CLH) testified that he fell ill in December, 2015 and had to take time off work. Both tenants get disability income as well, but the problem stemmed from the Ministry. It takes time for the paperwork to be processed. The other tenant's rent money goes directly to the landlord from the Ministry, and now this tenant's rent will also go directly to the landlord from the Ministry. The tenants have also provided a written payment plan to catch up on arrears and maintain rent when it is due. The first installment on the payment plan is \$200.00 from one tenant and \$100.00 from the other on March 23, 2016. The tenant met with the landlord but the landlord refused the money.

The second tenant (BMC) testified that the other tenant had an illness in December, 2015 and the tenants tried to get Ministry help, but it took time. After the tenants got the notice to end the tenancy, they went to the landlord, the last Wednesday of February, 2016 with cash in hand that would have covered February's rent, but the landlord wouldn't take it.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the notice or pay the rent in full. If a tenant pays rent in full within 5 days of receipt of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the notice is of no effect. In this case, I find that the tenants were served with the notice on February 5, 2016, and the tenants did not pay the rent in full by February 10, 2016, but disputed the notice the same day it was served.

The landlord testified that no rent was paid since the notice to end the tenancy was served, but also testified that it was served February 5, 2016 and the tenants owe \$500.00 for March. The landlord collected \$480.00, albeit directly from a government Ministry, after the effective date of the notice. The landlord also testified that due to the tenants' failure to adhere to the payment plan on March 23, 2016 the landlord was not satisfied that the payment plan would be followed. However he also testified that he refused rent on March 23, 2016.

Where a landlord collects rent after the effective date of vacancy contained in a notice to end the tenancy for unpaid rent, the landlord must make it clear to the tenant that the rent is being received for use and occupancy only and doesn't serve to reinstate the tenancy. That is often accomplished by providing the tenants with a receipt or some other written document that specifies that the money is being accepted for the unpaid rental arrears, which the landlord is entitled to. Where a landlord fails to do so and collects rent, the landlord can be found to have reinstated the tenancy.

In this case, the landlord collected rent after the effective date of the notice, testified that no rent had been received since the issuance of the notice, and failed to mitigate any loss suffered by refusing rent money in March, 2016. In the circumstances, I find that the landlord has reinstated the tenancy, and I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 5, 2016 is hereby cancelled and the tenancy continues.

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 31, 2016

Residential Tenancy Branch