



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants request an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued February 3, 2016 (the "Notice") and to recover the filing fee.

Both parties appeared at the hearing. The Landlord T.H. and her daughter, J.A. appeared on behalf of the Landlord. The Tenant, J.P., was in attendance throughout the hearing and the Tenant, B.S., called in part way through.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

On the Details of Dispute section of the Tenant's Application for Dispute Resolution they write:

"Our landlord gave us notice to move out MARCH 1st 2016, reasoning family + renovations. She then changed her mind + is wanting rent money. We are refusing based on the fact that we thought we had to be out and would be compensated."

[Reproduced as Written]

The above suggests the Tenants received a 2 Month Notice to End Tenancy pursuant to section 49 of the *Residential Tenancy Act* and claim compensation pursuant to section 51.

J.A. testified that the Landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use.

J.A. stated that in October she got married. She stated that she wanted to move back into the rental unit but she had "flexibility" around the move in date and advised the Tenants accordingly. She stated that she had hoped to end the tenancy by agreement and to this end she provided the Tenants with a mutual agreement to end tenancy. A copy of that document was introduced in evidence. J.A. confirmed it was not signed by the Tenants, nor was any agreement reached.

J.A. stated that she did not discuss this issue again with the Tenants until February 2016 when T.H. attempted to pick up the rent. She said at this time the Tenants said they were not moving out and further that they were not paying rent for February.

When the Tenants failed to pay the February rent, the Landlord issued the Notice and posted it to the door on February 3, 2016.

J.A. testified that the Tenants then tried to pay March and April rent, but the Landlord would not accept it as they didn't know what to do as they had already issued the Notice.

J.P. testified on behalf of the Tenants. She stated that the tenancy began March 1, 2015. Monthly rent was payable in the amount of \$2,360.00 for the upper floor of a duplex. The Tenants also paid a security deposit of \$1,180.00.

J.P. confirmed that she saw the Notice which was posted on the rental unit door on February 6, 2016.

J.P. testified that in October the Landlord, T.H., asked the Tenants to sign a mutual agreement to end tenancy as T.H.'s brother and her family were moving into the rental unit. J.P. further stated that the Landlord told them that if they moved out in March they would not have to pay rent for February 2016.

J.P. stated that she understood *now* that she was not entitled to a free month's rent as the Landlord did not issue a 2 Month Notice. She stated that at the time, they did not pay the February rent as they believed an agreement had been reached that they would move out in March and not be responsible for paying for February's rent. J.P. further stated that the Landlord refused to accept the March and April rent.

J.P. confirmed that as of the date of the hearing they had not paid rent for February, March or April 2016.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Tenants believed at the time they were entitled to a free months' rent, the Landlord had not in fact issued a 2 month notice pursuant to section 49 of the *Residential Tenancy Act*; as such, the Tenants were not entitled to compensation pursuant to section 51.

Under section 26 of the *Act*, the Tenants must not withhold rent unless the Tenants have some authority under the *Act* to not pay rent. In this case, the Tenants had no authority under the *Act* to not pay rent.

I dismiss the Tenants' application and find the Notice to be valid. Pursuant to section 55 of the *Act*, I also grant the Landlord an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the Tenants have been unsuccessful, I dismiss their claim for recover of the filing fee.

Conclusion

The Tenants failed to pay rent and their application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession effective two days after service.

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: April 07, 2016

Residential Tenancy Branch

