



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDC

Introduction

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

Both landlords and the tenant attended the hearing, each gave affirmed testimony and the landlords called one witness who 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 landlords advised that they provided 14 pages of evidentiary material to the Residential Tenancy Branch and to the tenant on April 22, 2015. The tenant has a copy, but a copy of that material is not on the case file and was not received by me until after the hearing had concluded. The parties were advised that no Decision would be made by me until receipt of that material. I have now obtained it, and that material, along with the evidentiary material provided by the tenant is considered in this Decision.

Issue(s) to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Has the tenant established that the landlords should be ordered to comply with the tenancy agreement with respect to the amount of rent payable?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically with respect to overpayment of rent?

Background and Evidence

The first landlord (ADM) testified that this tenancy began on June 1, 2015 for a fixed period to expire November 30, 2015 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$750.00 per month was payable on the 1st day of each month for a furnished suite. The landlords collected a security deposit from the tenant in the amount of \$375.00 at the beginning of the tenancy, and no pet damage deposit was collected. The tenant still resides in the rental unit, which is the lower level of a home, and the upper level was occupied by the landlords until April 15, 2016.

The landlords sold the rental house effective April 15, 2016. The landlords had told the tenant that the tenant could keep the furnishings in the rental unit, and because the rental unit was “unfurnished” the rent for the purchaser would be lower. Therefore, the parties agreed to reduce rent to \$525.00 effective April 15, 2016 and created a new tenancy agreement in January, 2016. The tenant has provided a copy and it is dated December 2, 2015 and states that the tenancy commences on December 1, 2015 on a month-to-month basis for rent in the amount of \$525.00 per month. The parties back-dated the tenancy agreement at the suggestion of the realtor.

The tenant failed to pay rent in full in March, 2016, having only paid \$500.00 and the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 15, 2016 by placing it under the door where the landlords usually placed the tenant’s mail. A copy has been provided and it is dated March 15, 2016 and contains an effective date of vacancy of March 25, 2016 for unpaid rent in the amount of \$250.00 that was due on March 1, 2016. The tenant paid to the landlords \$25.00 on March 17, 2016 and the tenant’s parents paid the balance of \$225.00 by cheque dated March 22, 2016. The landlords received the cheque sometime after March 22 along with a cheque in the amount of \$750.00 for April, 2016. The landlords’ portion of the April rent cheque was \$375.00 and the balance went to the realtor or notary who transferred the security deposit and any other money to the purchaser.

The landlords have also provided a list of furnishings with the move-in condition inspection report which sets out numerous items, not just of furniture, but rugs, mirrors, dishes and quite an extensive list.

The landlord further testified that the realtor was present when the parties entered into the verbal agreement that the rent would decrease after the landlords were no longer landlords. The realtor had suggested that the new tenancy agreement be created for the purchaser and that it would be a good idea to back-date it to prevent a purchaser from believing rent was lower. It was only lower because it would no longer be rented

fully furnished. The landlords have also provided a list of furnishings, and the landlord testified that the amount is far more than the tenant's claim.

The second landlord (WLM) testified that the tenant's attachment to the application for dispute resolution is a complete fabrication, full of lies and deception. The landlords never asked, nor did the tenant pay full rent due to the landlords' financial situation.

The parties developed a friendship resulting in the tenant becoming privy to the landlords' private information but the tenant has become ungrateful and cruel. The tenant's application for monetary compensation is unwarranted, and should be dismissed.

Copies of letters and emails exchanged by the parties have also been provided, one of which is a letter from the landlords to the tenants dated February 25, which refers to an attached email from the tenant that was received by the landlords that day. The email states, in part:

"March's rent is \$750 & April's rent is \$375 a half of the month ...which amounts to \$1125.....then take off my \$125 for my security deposit....the new amount is \$1000So I will pay you \$500 for March's rent & \$500 for April's rent!!!! So as of April 1st we are all settled up....I have payed all my rent that is owed to you and you will owe me nothing for security deposit....

"I will also pay the new owners there half a months rent in April Sorry for the inconvenience to you."

The landlord's witness testified that he is the realtor and listed the rental home for sale. It sold very quickly, and the deal was going to complete on April 15, 2016. Rent was \$750.00 per month and the landlords intended to have the tenant pay that much until April 15, 2016 when the deal completed, and would complete a new lease so that when the purchaser assumed title, the tenant would be paying \$525.00 per month. The landlords were going to give the furnishings to the tenant and rent without furnishings was cheaper. However, what appears to have happened, is the tenant now says that since the lease is dated December, 2015 the tenant insists that rent is \$525.00.

The witness also testified that in mid-January, 2016 he and the landlords and the tenant went into the rental unit and the landlords were discussing with the tenant that the tenant could keep the furnishings so that rent would be \$525.00 and agreed to put that in writing.

The witness has also provided a written statement which states, in part:

“On January 17th, I met with the (landlords) to discuss what was to be done about the suite. Since the furnishings and contents of the suite were not a part of the sale, the (landlords) had decided that they would gift them to (the tenant). By doing so, the suite was rendered unfurnished and would thus command a considerably lower rent. I suggested a rent of \$550 a month, but (the landlord) had already discussed it with (the tenant) and decided that \$525 a month would be better for (the tenant).

“It was my suggestion that a new rental agreement be drawn up that would reflect the lower rent and the suite being unfurnished to the new owners. The understanding was that (the tenant) would continue to pay her regular month to month rent of \$750.”

The tenant testified that on January 8, 2016 one of the landlords asked the tenant to attend the landlords' residence, and there was some paperwork on the landlords' kitchen table. The landlords let the tenant know that they were selling their house and gifted the furnishings to the tenant because they couldn't fit it in their new modular home. It was a nice gesture. On January 10, 2016 the landlord again asked the tenant to attend the landlords' residence and the landlords had a lease on the table for the tenant to sign. They had already received an offer to purchase that day, and the parties signed the new tenancy agreement.

The tenant further testified that she paid rent for February in the amount of \$500.00, being short \$25.00 and everything went crazy from there. The landlords bullied the tenant, left 15 written messages to the tenant in 7 days about the payment of rent and that the tenant should borrow the money. The tenant tried to make a deal with the landlords on February 25, 2016 for the payment of the balance but the landlords said they didn't want any part of that. On March 15, 2016 the tenant received the notice to end tenancy and later discovered that the tenant's father had paid the rent.

The tenant further testified that the realtor was at the rental unit on the 8th of January. The landlords had an offer to purchase and the parties were talking about the furnishings and that rent should be cheaper. The parties agreed to \$525.00 which they agreed to in writing on the lease signed.

The tenant was confused during her testimony of when and how much rent was paid, but testified that she paid \$750.00 in November; \$500.00 on December 28 and the balance for December of \$250.00 on January 4.

The tenant has provided a monetary break-down of her claim for overpayment of rent as follows:

- January / 2016 \$225.00
- February / 2016 \$225.00
- March / 2016 \$225.00; and
- April / 2016 \$487.50

The tenant stated that the landlords should have only received half of the \$525.00 for April because the new landlords took over on April 15, 2016. The tenant claims \$1,162.50 for overpayments made to the landlords.

Analysis

Firstly, with respect to the notice to end the tenancy, the *Residential Tenancy Act* states that once a tenant is served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the notice is of no effect. The landlord testified that the notice was served by leaving it in a conspicuous place, being the place where the tenant's mail is usually delivered, on March 15, 2016, which is deemed to have been served 3 days later, or March 18, 2016. The landlords did not provide a date when the rent money was received from the tenant's parents but testified that the cheque was dated March 22, 2016, clearly within 5 days. Therefore, in the absence of any evidence of the date that the landlords actually received it, I find that the tenant paid the rent within 5 days and the notice is of no effect.

There is no question that the rental amount at the commencement of the tenancy was \$750.00 per month for a fully furnished rental unit including dishes and other furnishings. Also, the tenant doesn't disagree that the tenancy agreement dated December 2, 2015 was back-dated, having testified that the landlords had the tenancy agreement prepared when the tenant attended at the landlords' residence on January 10, 2016. The tenant claims that there was no conversation about actually reducing rent prior to the signing of the tenancy agreement dated December 2, 2015. However, the tenant continued to pay rent at the rate of \$750.00 per month. Further, the tenancy agreement specifies that the tenancy commences December 1, 2015 and the tenant has made no claim for an overpayment of December's rent.

Considering the testimony and written documentation from the landlords' witness that he heard the parties discuss the furnishings and the new tenancy agreement, and that he had suggested the parties create the new tenancy agreement, I am satisfied that the rental amount was \$750.00 per month furnished. Considering the email of the tenant received by the landlords on February 25, 2016 and other documentation exchanged by the parties, I also find that the tenant was well aware of that, and that the new amount of

\$525.00 was for an unfurnished suite and the tenancy agreement was made to reflect that new amount to benefit the tenant in addition to the gifted furnishings.

The tenant filed the original application for dispute resolution on March 22, 2016 disputing the notice to end the tenancy, then filed the amendment on April 5, 2016 seeking recovery of overpayment of rent. I find that the tenant disputed the notice to end the tenancy based on the December 2, 2015 tenancy agreement, and then had to claim the overpayment to establish that rent was lower in order to establish that the notice should be cancelled.

In the circumstances, I am not satisfied that the tenant has established that rent was reduced by agreement while the tenant was in possession of the furnishings and while the landlords were landlords of the rental unit. The tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby cancelled.

The balance of the tenant's application is hereby dismissed without leave to reapply.

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 29, 2016

Residential Tenancy Branch