



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Mang
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR

Introduction

This hearing was held in response to the tenants' application for dispute resolution in which the tenants have applied requesting more time to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on July 6, 2016 and to cancel the Notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant said that the landlords' agent was handed a copy of five pages of evidence that was supplied to the Residential Tenancy Branch on August 5, 2016. The landlord said they did not receive that evidence. The tenant could not recall the date this evidence was given; therefore I determined that service of the evidence was in question and the evidence was set aside.

However; the landlord confirmed that they had copies of letters issued to the tenants on October 16, 2015 and January 13, 2016; those documents were then referenced during the hearing. The tenant was at liberty to make oral submissions in relation to the balance of the written submission which was set aside.

Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on July 6, 2016 be cancelled?

Background and Evidence

The landlord stated that on July 6, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of July 16, 2016 was served by posting to the tenants' door. The tenant could not recall the date it was received; it was either on July 6 or 9, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,000.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an application for dispute resolution within five days.

The landlord said that the sum indicated as owed on the Notice is for June and July 2016 rent plus a security deposit in the sum of \$600.00. I explained that a security deposit is not rent and should not be included as such on a Notice ending tenancy.

The tenancy commenced on June 1, 2016. The issue of the tenancy start date and rent owed is in dispute. The tenant said that rent is \$1,100.00; the sum that was indicated on the intent to rent form the landlord signed. The form was given to the government ministry that pays the tenants' rent directly to the landlord.

The landlord said that they have a tenancy agreement initialed on June 2, 2016 by the male tenant indicating rent owed is \$1,200.00 per month. The tenant said they have not been given a copy of the tenancy agreement. The tenant said that her co-tenant is ill and that if he had signed the tenancy agreement she would have been aware of that as they have completed all matters related to the tenancy together. The tenant was relying on the intent to rent form that showed rent owed in the sum of \$1,100.00. The tenant said that they moved into the rental unit on June 9, 2016.

The landlord was asked to submit a copy of the tenancy agreement to the Residential Tenancy Branch no later than 12 noon on the date of the hearing. I explained that I wanted to examine that document in an attempt to establish the sum of rent owed.

A copy of a tenancy agreement was supplied, as requested. The agreement, on a standard landlord association form, indicated that rent is \$1,200.00 per month. The due date term is not discernable. There was no dispute that rent is due on the first day of each month. The final page of the agreement indicates that the "tenants accept the unit as it is" and "tenants are aware that the building may be demolished this year." It appears that the female and male tenants initialed the agreement; the writing appears to match that shown on an application for tenancy supplied by the landlord and, in particular, the male tenants' signature found in the application for dispute resolution documents.

The parties agreed that the tenants had lived at another location, on F. Street. That tenancy was to end effective June 30, 2016 as the result of a two month Notice to end

tenancy that was given to the tenants in April 2016. A copy of that Notice was not supplied as evidence although it was agreed that the tenants were being evicted from a building that was to undergo redevelopment.

The rental unit on F. Street was managed by the same agent as the current tenancy.

The agent confirmed that a property development company worked with the tenants to assist them in locating the current rental unit. The January 13, 2016 letter to tenants issued by the property developer set out clarification of a letter than had been given on December 28, 2015. The tenants were told that they could vacate the rental unit with 10 days' notice. They would have to pay rent up to the date of their notice and any rent paid for the balance of the month would be returned. The tenants were also offered free rent or the equivalent of three months' rent if they would vacate between May 2016 and June 2016. These facts were not in dispute.

The developer arranged to have the tenants' unit packed and moved to the current unit on S. Avenue. The current rental unit is owned by a different entity than the F. Street property, but is under the same property management company that issued the Notice to end tenancy for the F. Street unit.

As part of the agreement to vacate F. Street the tenants were issued a cheque in the sum of \$3,800.00. The landlord explained that this sum represented three months' rent at \$950.00 per month (April, May and June) plus return of the security and pet deposits in the sum of \$475.00 each. The tenant said that if they had been clearly told they must pay June 2016 rent they would have done so. However, the tenant said that the landlord had clearly indicated that June rent paid would be returned.

The landlord said that the tenants were required to pay full rent for June 2016 after they moved to the new unit on S. Avenue. The tenant said that they were told via the letter given by the developer that they did not have to pay June 2016 rent. The government ministry had paid the rent to the landlord for the three months (April to June 2016) and then that rent was returned to the tenants directly, as compensation. The tenant said no one told them that they would be given compensation for June rent and then be required to pay the rent again for that same month.

The landlord said that on July 12, 2016 they received two payments totaling \$950.00; \$550.00 on August 2, 2016 and another \$550.00 on August 8, 2016; totaling \$2,050.00. No further rent has been received.

Analysis

I find that the tenants are deemed to have received the 10 day notice to end tenancy issued on June 9, 2016; three days after it was posted to the door. The deemed provision of the Act has been applied as the tenant could not recall the date the Notice was received.

This hearing has included submissions that relate to two separate tenancies. Both tenancies were managed by the same property management company and involved a third party developer who assisted the tenants in relocating to their current rental unit on S. Avenue. I have considered the facts related to the tenancy on F. Street as they directly impacted the tenants understanding of rent that was owed.

When the tenants received a two month Notice to end tenancy they were entitled to provide the landlord with 10 days written notice. Pursuant to section 50(2) of the Act, the landlord would then be required to refund any rent paid for the balance of the month.

The tenants were given notice that they would receive a clear three month's compensation if they vacated F. Street by June 2016. They did so with the assistance of an agent of the landlord and compensation was paid. Therefore it is reasonable to accept that the landlord had been given notice that the tenants were vacating prior to the end of June 2016 to relocate to the current address. The current landlord's agent had been aware of this facilitated move to S. Avenue; where they also manage the property on behalf of this different owner.

A Notice to end tenancy for unpaid rent and utilities must not include any other debts. As explained during the hearing a landlord may issue a one month Notice to end tenancy for cause if a deposit has not been paid. In relation to the force of the Notice ending tenancy I find, pursuant to section 62(3) of the Act that when the landlord issued the Notice that included a sum of \$600.00, that was not rent, the landlord contributed to further confusion regarding rent owed for June 2016 and, as a result, the Notice is nullified and cancelled. The tenancy will continue until it is ended in accordance with the Act.

The landlord was aware of the transfer of the tenants and the compensation paid. I find it is not unreasonable for the tenants to have believed that they did not have to pay June 2016 rent, as they had been told it would be refunded. Since they were renting from a landlord that appeared to be the same as the S. Avenue unit, the tenants believed rent was not required. It was the same agent involved in both tenancies; but apparently different owners.

I find that the tenants signed a tenancy agreement on June 2, 2016 for a tenancy that was to commence the day prior. The tenants submit that they did not take possession until June 9, 2016. From the evidence before me I find that the tenancy commenced on June 1, 2016 and that rent owed is \$1,200.00 on the first day of each month. The tenants did not supply a copy of the intent to rent form; however, the signed tenancy agreement constitutes a contract between the parties and takes precedence over the intent to rent. I have relied on the tenancy agreement terms.

It appears that since June 1, 2016 to the date of the hearing the tenants have paid a total of \$2,050.00 directly to the landlord. The parties are at liberty to calculate the sum of rent owed since June 1, 2016 to the time of receipt of this decision. The tenants are advised to ensure that any rent arrears are paid in full. If rent owed is not paid the landlord is at liberty to issue a 10 day Notice to end tenancy.

Conclusion

The Notice issued on July 6, 2016 is cancelled.

Rent is \$1,200.00 per month, due on the first day of each month, commencing June 1, 2016.

This decision is final and binding and 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: September 01, 2016

Residential Tenancy Branch