



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants and an amended application made by the tenants seeking orders cancelling notices to end the tenancy for unpaid rent or utilities and for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

One of the named tenants and both landlords attended the hearing, and the tenant and one of the landlords gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The Tenant's Application for Dispute Resolution does not contain full names of the landlords. Upon the landlords introducing themselves at the commencement of the hearing, I determined that they are 2 individuals, and I amend the application to reflect both names. The Style of Cause on the frontal page of this Decision reflects that amendment.

At the commencement of the hearing, the tenant advised that she had not received the landlord's evidentiary material. The landlord testified under affirmation that the material was placed in the tenant's mailbox on September 23, 2016. The tenant also advised that she never signed a tenancy agreement, only an "Intent to Rent" form, unless she has misplaced it, however the evidentiary material provided by the landlord includes a copy of a tenancy agreement signed by the tenant. I accept the affirmed testimony of the landlord that the evidentiary material was provided to the tenant on September 23, 2016, and that evidence is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2016 with 4 tenants named in the tenancy agreement, a copy of which has been provided. The tenant who joined this hearing and another tenant still reside in the rental unit. Rent in the amount of \$2,000.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlords. The rental unit is a single family dwelling.

The landlord further testified that the tenants have failed to pay the entire rent when due, having paid only half the rent for the months of June, July, August, September and October, 2016, leaving rental arrears outstanding currently totalling \$5,000.00. The landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but were told that since it is dated the 1st of August, 2016, it can't be enforced. The landlords caused a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served on the tenants and a copy has been provided for this hearing. It is dated August 17, 2016 and contains an effective date of vacancy of August 27, 2016 for unpaid rent in the amount of \$3,000.00 that was due on August 1, 2016.

The tenants' rent is paid directly from a government Ministry, so no receipts have been issued to the tenants, and the landlords have not have any conversations with the tenants since the notice was issued.

The tenant testified that each of the 4 tenants named in the tenancy agreement were responsible for \$500.00 per month rent. Two of the tenants moved out of the rental unit in late June or early July, 2016 and the landlords keep pressuring the remaining tenants to put an advertisement on Craigslist to replace them so the rent can be paid in full, but the tenant is not comfortable renting with strangers.

The tenants have done their part and want to move out of the rental unit but it's difficult to find another place to rent. The landlord continues to collect rent, and each time the landlord gave a notice to end the tenancy, the landlord tried to get the tenants to find room-mates. The tenants who have moved out were supposed to tell the Ministry to pay their share of the rent directly to the landlord like the remaining 2 tenants did, but the tenant does not know why they didn't do so. The tenant feels she's being punished.

The tenant also testified that a friend of the landlord as been assigned by the landlord to act as the landlord's agent. He has threatened and intimidated the tenants, saying he is an ex-police officer and says he will move the tenants out or get a Bailiff to do so.

Analysis

A landlord may end a tenancy for unpaid rent if rent isn't paid in full. In this case, rent has not been paid in full for the months of June through October, 2016, and the landlords have issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice). I have reviewed the notice and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

I refer to Residential Tenancy Policy Guideline #11 - Amendment and Withdrawal of Notices, which states, in part:

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- ☐ whether the receipt shows the money was received for use and occupation only.
- ☐ whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- ☐ the conduct of the parties.

In this case, the landlords have continued to accept rent after the effective date of the notice. The landlord testified that she has not had any communication with the tenants since the issuance of the notice and did not provide the tenants with any receipts or documentation specifying that rent is being collected for use and occupancy only and does not serve to reinstate the tenancy. I find that the landlords have effectively reinstated the tenancy, and therefore I must cancel the notice.

There is no dispute that not all of the rent has been paid, however there is no application before me by the landlords seeking to recover it. The landlords are entitled under the *Act* to issue another notice to end the tenancy if rent remains unpaid and are entitled to apply for monetary compensation for unpaid rent.

With respect to the tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement, the landlords are entitled to specify an agent to

deal with a tenancy, however if so, that person may be considered a landlord for the purposes of the *Act*. Further, a tenant is entitled to quiet enjoyment of a rental unit, free from unreasonable disturbances. The tenant's testimony of an agent threatening and intimidating the tenants is not disputed by the landlord. Therefore, I find it appropriate to order the landlords to comply with the *Act* by providing the tenants with their right to quiet enjoyment, free from unreasonable disturbances.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 1, 2016 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 17, 2016 is hereby cancelled.

I order the landlords to comply with the *Residential Tenancy Act* by ensuring the tenants' right to quiet enjoyment of the rental unit free from unreasonable disturbances.

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: October 06, 2016

Residential Tenancy Branch

