



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, OLC, ERP, RP, PSF, RPP, LRE

Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued in August 2016; compensation in the sum of \$1,886.00 as damage or loss under the Act; an order the landlord comply with the Act, make repairs and emergency repairs; an order the landlord provide services or facilities required by law and an order to suspend or set conditions on the landlords' right to enter the rental unit.

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

On September 21, 2016 the landlord issued a second 10 day Notice to end tenancy for unpaid rent. Records show that on September 26, 2016 the tenant submitted another application, to dispute the September 21, 2016 Notice. However, at the time the tenant submitted the application the tenant was told to amend the current application, to dispute the Notice.

On October 5, 2016 the tenant amended the application originally made on September 15, 2016, to dispute the September 21, 2016 Notice and served that amendment to the landlord. From the evidence before me I find that the tenant did apply to dispute the September 21, 2016 Notice within five days of the date the Notice was issued. It is not the fault of the tenant that the application made on September 26, 2016 was not processed.

The landlord confirmed receipt of the amendment to the application made on October 5, 2016. The landlord confirmed the amendment was served at least 14 days before the hearing.

The application was reviewed and section 2.3 of the Rules of Procedure was applied

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant indicated that maintaining the tenancy is the most important matter. As the other portions of the application do not relate to payment of rent I determined that the hearing would proceed on the Notices to end tenancy. The balance of the application is dismissed with leave to reapply within the legislated time limit.

Issue(s) to be Decided

Should the 10 Day Notices to end tenancy for unpaid rent and utilities (the Notice") issued in August and on September 21, 2016 be cancelled?

Background and Evidence

The tenancy commenced in December 2014. Rent is due on the first day of each month. The tenant stated that rent is \$650.00 per month but if they cannot afford to pay the entire sum the landlord has allowed them to pay \$600.00 per month. The parties confirmed that some sort of family relationship exists between the parties.

The landlord said there is no agreement allowing the tenants to pay less than \$650.00 per month. The tenants were given the first months' rent free and that until June 2016 the tenants paid \$650.00.

The parties did not sign a tenancy agreement.

The landlord confirmed that no receipts have been issued for rent payments, which have been made in cash.

A 10 day Notice ending tenancy for unpaid rent as issued in August 2016. The Notice did not provide a complete issue date; only the month and year were indicated. The parties were informed that the Notice failed to meet the requirements of section 52(a) of the Act; as it was not dated. The August 2016 Notice was cancelled and the hearing proceeded in relation to a 10 day Notice ending tenancy for unpaid rent issued on September 21, 2016.

The tenant confirmed receipt of a 10 day Notice to end tenancy for unpaid rent or utilities that was issued on September 21, 2016. The tenant applied to dispute that Notice on September 26, 2016. The Notice has an effective date of October 1, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,250.00 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 tenants paid rent as follows:

- 0 - December 2015
- \$650.00 paid in January, February
- \$500.00 in March 2016
- \$650.00 in April and May, 2016
- \$600.00 in June 2016;

- \$600.00 in July 2016;
- \$570.00 in August 2016; and
- \$400.00 in September 2016.

Between December 2015 and September 2016 the landlord submits the tenants paid a total of \$3,970.00. Rent owed over 10 months at \$650.00 per month would be \$6,500.00; leaving a difference in the sum of \$2,530.00. If rent is \$600.00 per month the tenants would owe \$2,030.00. The sum on the Notice as unpaid is \$1,250.00.

The landlord said the tenants agreed to complete some work on the trailer in order to compensate the landlord for unpaid rent. The tenants have not completed any work.

The tenant said that they paid December 2015 rent but did not receive a receipt. The tenant agreed that they paid \$500.00 in March and \$400.00 in September, 2016. The tenant agreed that \$600.00 was paid in each of June and July 2016.

Analysis

Section 46(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. The tenants disputed the Notice within five days.

I have calculated what the landlord states has been paid since December 2015 and the sum indicated as owed on the Notice and find no consistency. If the tenants have paid the sum set out by the landlord the tenants would, by my calculation, owe either \$2,530.00 or \$2,030.00; depending on the level of rent actually payable.

Section 26(2) of the Act requires a landlord to issue a receipt for any cash payment made to a tenant. The landlord has confirmed that receipts have not been issued. This leaves the landlord in a position where proof of payment is not easily achieved. In the absence of receipts issued, as required by the legislation I find that I cannot rely on the sum indicated as owed on the Notice ending tenancy. There is no record of actual payments made and no reliable record-keeping was supplied to support the sums claimed as unpaid.

The tenant has confirmed that some rent is owed; however, I find that the Notice ending tenancy issued on September 21, 2016 cannot be relied upon as the sum on the Notice is not supported by the evidence. The landlord has the burden of proving the sum owed and has failed to do so.

In the absence of evidence of rent actually paid and an accurate sum on the Notice I find, pursuant to section 62(3) of the Act that the Notice ending tenancy issued on September 21, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

Pursuant to section 62(3) of the Act, from the evidence before me I find that rent is \$650.00 per month, due on the first day of each month. The tenant confirmed that rent was payable in that sum. If there is any agreement to reduce rent in any month it is advisable that the parties sign an agreement setting out the reduction.

During the hearing the parties were advised that co-mingling employment with a tenancy can result in confusion.

The landlord is at liberty to issue a Notice ending tenancy that contains the correct sum of rent owed.

If rent is paid by cash I order that the landlord comply with section 26(2) of the Act by issuing receipts for each payment, at the time rent is paid.

Conclusion

The Notice ending tenancy for unpaid rent issued in August 2016 is cancelled.

The Notice ending tenancy for unpaid rent issued on September 21, 2016 is cancelled.

Rent is \$650.00 per month due on the first day of each month.

The landlord is ordered to issue receipts for each payment made in cash.

The balance of the application is dismissed with leave to reapply.

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: November 14, 2016

Residential Tenancy Branch