



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENCHMARK RENOVATIONS LTD
to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46.

The landlord's agent and both tenants attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the 10 Day Notice dated November 7, 2016 on that same date when it was posted on their rental unit door. The landlord confirmed receipt of the tenant's application for dispute resolution dated November 10, 2016 on or about November 17, 2016 when it was received by registered mail. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice. I find that the landlord was duly served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The parties agreed on most of the facts. This is a month to month tenancy with rent in the amount of \$1,300.00 due on the 1st of the month. Customarily, the tenants provide the building manager with the rental amount in cash placed into an envelope. The building manager issues a receipt to the tenants upon receipt of the envelope.

The tenants testified that they placed \$1,300.00 into an envelope, as they have customarily done, and provided this envelope to the building manager on November 7, 2016. The landlord testified that the building manager did not have pre-made receipt slips at that time and therefore issued a handwritten receipt on the spot indicating that

\$1,300.00 for rent was received from the tenants. The handwritten receipt was submitted into evidence by the tenants and the landlord confirmed that the building manager issued it in his capacity as agent for the landlord.

The landlord testified that the building manager did not open the envelope to count the cash before issuing the receipt and when the envelope was opened there was a total of \$650.00 and not the \$1,300.00 full amount of rent. The landlord states that the total arrears for this tenancy is \$650.00 at the date of the hearing.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

In accordance with subsection 46(4) of the *Act*, the tenants must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants received the 10 Day Notice on November 7, 2016, and made a rental payment on that same date as well as applying within five days of receipt on November 10, 2016. Accordingly, the tenants complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord stated that there is a rent arrears of \$650.00 as the amount of cash received on November 7, 2016 was not the full rental amount despite having issued a receipt for the full amount.

The tenants maintain that the full rental amount of \$1,300.00 was placed into the envelope provided to the building manager.

I found both parties to be sincere, forthright and consistent in their respective testimonies. Both the landlord and tenant provided an equally probable version of what may have happened. The landlord bears the onus of establishing on a balance of probabilities, that is to say it is more likely than not, that the tenant has not paid the full amount of the rent. The landlord had the opportunity to call the building manager to provide sworn testimony or submit affidavit evidence that there was only \$650.00 contained in the envelope but did not do so. I also find that the handwritten receipt provided by the landlord confirming payment of the full \$1,300.00 to be somewhat more

compelling than the conflicting sworn testimony provided by the parties. Though the landlord testified that the receipt was issued prior to counting the money contained in the envelope I find the existence of documentary evidence instructive where there are two conflicting sets of sworn testimony. I find that the totality of the facts does not conclusively support one version of events over the other.

When both versions of the event are equally likely the landlord has not met the onus to establish their version of events as being more likely. Therefore, I find that the landlord has not established the evidentiary basis in order for the 10 Day Notice to be upheld.

Conclusion

The landlord's 10 Day Notice, dated November 7, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: December 14, 2016

Residential Tenancy Branch