



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.A. Cedar Place Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, MNDC, MNR

Introduction

This was a cross-application hearing.

The tenants applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on November 9, 2016 and compensation for damage or loss under the Act.

The landlord applied requesting compensation for unpaid rent and parking fees and an order of possession based on unpaid rent.

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 tenants have applied requesting compensation in the sum of \$25,000.00 as damage or loss. The landlord applied requesting compensation for unpaid rent and parking.

After taking submissions from each party I applied section 2.3 of the Rules of Procedure, which provides:

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.

As the tenants' monetary claim does not relate to rent owed I determined that the monetary portion of the tenants' claim is dismissed with leave to reapply. Any evidence supplied for this file will not be transferred to a new application.

The tenants believed that this hearing was held as an adjournment of a previous hearing held on November 9, 2016. A copy of that decision was supplied as evidence (see cover for file number.) It was explained that the decision issued on November 10, 2016 was final, not interim, and that the balance of the applications made previously were not adjourned. The parties were given leave to reapply on the monetary portions of that claim.

After taking submissions in relation to rent and parking I determined that parking is not included with rent. Therefore, the landlord has leave to reapply in relation to parking fees.

Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on November 9, 2016 be cancelled entitled to an order of possession?

Is the landlord entitled to compensation for unpaid rent?

Background and Evidence

The tenancy commenced on March 1, 2014 for a term ending effective February 28, 2019. This term was confirmed in the decision issued on November 10, 2016.

The tenancy agreement supplied as evidence shows rent owed in the sum of \$2,000.00 plus \$40.00 parking. The total rent owed section of the agreement is not completed. On May 1, 2016 the rent increased by \$58.00 based on proper Notice given, showing the amount of rent being increased as \$2,000.00. As a result I determined that rent is currently \$2,058.00 and that parking is not included with rent, but paid separately.

The tenants confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities on November 9, 2016. The Notice had an effective date of November 19, 2016

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,634.00 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 tenants said they paid the August rent at the same time as July rent was paid. At the end of June 2016 the two cheques were placed in the metal box that is in the lobby of the building; the method used for all rent payments. Since that time all rent cheques,

with the exception of August have been cashed by the landlord. The tenants allege the landlord has not cashed that cheque in an attempt to evict the tenants. The tenants were hesitant to issue another cheque as they believe the landlord would again delay cashing the cheque.

The tenants said that the hearing held on November 9, 2016 was the result of a two month Notice to end the tenancy for landlords' use. The tenants disputed that Notice and the arbitrator found the landlord could not end the tenancy for his own use until the fixed term ended.

The landlords' solicitor responded that is possible the August rent cheque was either not given or it has been lost or misplaced by the landlord. The tenants are still required to make good on payment, as rent was due and payable.

Analysis

There is no dispute that the tenants' received the Notice on November 9, 2016. Therefore, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on November 19, 2016, pursuant to section 88 of the Act.

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 as they had supplied the landlord with a cheque for payment of August rent.

Based on the testimony of the parties and the balance of probabilities, I have relied on the tenants' testimony as the most reliable. The tenants had direct knowledge of having placed the August rent payment in with the July, 2016 rent payment. I found their testimony believable and consistent. The landlord's solicitor could not say with any confidence that the cheque had not been received.

A tenant cannot be placed in the position of possible eviction as the result of a cheque that may have been misplaced by the landlord. Therefore, I find that the landlord has failed to prove that August 2016 rent has not been paid. I find it more likely than not that the landlord received the cheque and that the landlord has not, for whatever reason, cashed that cheque. As a result, I find that the 10 day Notice to end tenancy for unpaid rent issued on November 9, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

In relation to future rent payments it is strongly recommended that the tenants make payment via electronic transfer. During the hearing the tenants said that method of payment would be suitable. This will provide the tenants a record of the date the transfer is sent and the landlord with the opportunity for easy access to the payment. The tenants may also wish to supply the landlord with a series of post-dated cheques,

by having the landlord sign, confirming receipt of that series of cheques. It would then be up to the landlord to cash the cheques and for the tenants to ensure funds are available.

As it is clear the August 2016 rent payment did not process I find that the tenants must make that payment again. The tenants' are advised to place a stop payment on the cheque that has been issued for August 2016 rent. The tenants may make a cash payment for that month, directly to the landlord or the agent. Pursuant to section 26(2) of the Act, a receipt must be immediately issued for any cash payment made. That payment may also be made by electronic transfer or a replacement cheque.

As the tenants have paid a \$100.00 filing fee and, as their application has merit, I find pursuant to section 72 of the Act, that the tenants may deduct the filing fee cost from the next months' rent due.

The landlords' application requesting an order of possession and monetary order for unpaid rent is dismissed.

Conclusion

The 10 day Notice to end tenancy for unpaid rent issued on November 9, 2016 is cancelled.

The tenants are entitled to filing fee costs.

The landlords' application requesting an order of possession and a monetary order for unpaid rent is dismissed.

The tenants have leave to reapply on the balance of the application.

The landlord has leave to reapply in relation to any parking fees.

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: December 28, 2016

Residential Tenancy Branch