



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, DRI

Introduction

This hearing dealt with the tenant's application to cancel a 10 Day Notice to end Tenancy for Unpaid Rent and to dispute an additional rent increase. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord named in the tenancy agreement was present at the hearing. The landlord's manager, who issued the 10 Day Notice to End Tenancy for Unpaid Rent, was also present. Both the owner and the manager meet the definition of "landlord" under the Act and I have referred to either or both of these persons as "landlord" in this decision.

Issue(s) to be Decided

1. Is the tenant required to pay rent of \$830.00 per month as evidence by the tenancy agreement executed by the parties on October 12, 2016 or should the tenancy agreement be set aside?
2. Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 10, 2016 be upheld or cancelled?

Background and Evidence

The tenant began occupying one of the two bedrooms in the subject apartment in August 2016. The other bedroom was rented to a different tenant under a separate tenancy agreement with the landlord. The two tenants had shared access to the common living areas in the apartment. The tenant's monthly rent was set at \$415.00 and a security deposit of \$207.50 was paid. Shortly after the tenancy started the other tenant moved out. The landlord tried to find a replacement tenant for the other bedroom but was unsuccessful.

On October 12, 2016 the owner and the manager of the property approached the tenant, who also had a friend present. The landlord presented the tenant with a warning letter and a new tenancy agreement. The tenant signed both documents in the presence of the landlords and the tenant's friend.

The new tenancy agreement provides that the tenancy starts on October 12, 2016 and the tenant is required to pay monthly rent of \$830.00. The monthly rent is due on the "last day of the previous month". The tenancy agreement also indicates that 2 persons may occupy the rental unit although the names of the permitted occupants are not listed in the space provided.

The tenant is of the position that new tenancy agreement should not be enforced and the original tenancy agreement requiring her to pay rent of \$415.00 for use of the one bedroom should remain in effect. The tenant did not provide a copy of the original tenancy agreement. The landlord's manager stated he no longer has a copy of the original tenancy agreement.

The tenant claimed that the tenant signed the new tenancy agreement without reading it first. The tenant explained that she had contacts in her eyes at the time and she is not able to read when her contacts are in. The tenant acknowledged that she did not take her contacts out so that she could read the tenancy agreement. Rather, the tenant claims she relied on the landlords' statements that it contained the same terms as the original tenancy agreement and that the landlords had lost their copy of the original agreement. The tenant testified that she would never have agreed to pay rent of \$830.00 because she cannot afford such a payment on her disability income. The tenant testified that the friend who was present on October 12, 2016 did not wish to participate in this hearing.

The landlords stated that they explained to the tenant that she would be required to pay \$830.00 for the entire apartment under the new tenancy agreement; that she was agreeable to the new terms, and the tenant willingly signed the new tenancy agreement. The landlord is of the position that the tenant is bound to fulfill the terms of the new tenancy agreement.

The second bedroom remains unoccupied and the tenant has continued to pay the landlord rent in the amount of \$415.00 each month, including January 2017. The landlord has continued to advertise the second bedroom for rent but explained that this is being done so as to assist the tenant find a roommate. The tenant is of the position

that it is unfair for the landlord to shift the burden of the vacant bedroom to her since she has not been using it and cannot afford a two bedroom apartment.

On November 10, 2016 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The 10 Day Notice indicates rent of \$830.00 was outstanding as of November 1, 2016 and has a stated effective date of November 20, 2016. The tenant filed to dispute the 10 Day Notice within the time limit for doing so.

The landlord explained that the \$830.00 that appears on the 10 Day Notice is the unpaid balance of \$415.00 for the month of October 2016 and the unpaid balance of \$415.00 for November 2016.

Analysis

In this case, the first issue to determine is whether the tenancy agreement executed by the parties on October 12, 2016 is enforceable. The tenant seeks to have the tenancy agreement set aside on the basis she was duped into signing something different than what was told orally by the landlords on October 12, 2016. The landlords denied telling the tenant something different than what appears in the tenancy agreement. Both parties stated that there was a witness to the events that took place on October 12, 2016 and the tenant indicated that the witness would support her version of events. However, the tenant claims the witness was not willing to participate in the hearing. Accordingly, I am left with disputed verbal testimony as to the events that precipitated the signing of the new tenancy agreement.

The tenant claims she is not capable of reading a contract with her contacts in her eyes; however, the tenant made no attempt to take more time so as to remove her contacts before signing the tenancy agreement. Therefore, I find that any inability to read the tenancy agreement was within the tenant's ability to control.

In light of the above, I find the tenant did not satisfy me that she was incapacitated or that there was fraudulent misrepresentation on part of the landlord that would render the signed tenancy agreement of October 12, 2016 invalid or not enforceable. Therefore, I find that starting October 12, 2016 the new tenancy agreement took effect.

I note that there are terms in the tenancy agreement signed on October 12, 2016 that conflict with or otherwise violate the Act. Such terms are not enforceable pursuant to section 6 of the Act. However, the matter before me is the amount of rent payable by the tenant and I limit my analysis of the tenancy agreement to the rent obligation. .

Having found the parties entered into new terms of tenancy on October 12, 2016, I find the tenant became obligated to pay a monthly rent of \$830.00. However, the obligation to pay rent is limited to: "the last day of the previous month". In other words, there is no provision for the new amount of rent to be back dated or that the tenant be required to pay pro-rated rent for rest of October 2016. Further, the tenant had already paid rent for October 2016 when the new tenancy agreement was signed. Therefore, I find the tenant's obligation to pay the new rent amount of \$830.00 took effective starting the month of November 2016, which would have been due on October 31, 2016.

Upon review of the 10 Day Notice that was served upon the tenant on November 10, 2016, I find that it contains a number of errors and omissions. First of all, when the 10 Day Notice was issued, the only outstanding rent was \$415.00 for November 2016 as I have found the tenant was not required to pay the new amount of rent for October 2016 for the reasons given above. Secondly, the rent was due on October 31, 2016 and not November 1, 2016 as stated on the 10 Day Notice. Finally, the name of the landlord is not provided in the space provided on the form.

In consideration of all of the errors or omissions on the 10 Day Notice I decline to uphold it and I grant the tenant's request to cancel the 10 Day Notice.

Although I have cancelled the 10 Day Notice dated November 10, 2016, the landlord remains at liberty to issue another 10 Day Notice since I am satisfied that rent remains outstanding for the months of November 2016 onwards. If the landlord intends to pursue the end of this tenancy for unpaid rent, the landlord must not require the tenant to pay anything more for the month of October 2016.

Conclusion

I find the tenant is bound to fulfill the terms set out in the tenancy agreement signed on October 12, 2016, so long as the terms are compliant with the Act.

I have found that the tenant became obligated to pay rent of \$830.00 per month starting the month of November 2016.

Due to the numerous errors and omissions on the 10 Day Notice issued on November 10, 2016 I have cancelled it. As a result, the tenancy continues at this time.

The landlords remain at liberty to serve the tenant with another 10 Day Notice that is correct and duly completed to indicate the tenant failed to pay rent for the month of November 2016 (due on October 31, 2016) and onwards.

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: January 03, 2017

Residential Tenancy Branch