



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB, MNR, FF

Introduction

The landlord applies for an order of possession pursuant to a two month Notice to End Tenancy for landlord use of property and pursuant to an alleged mutual agreement to end the tenancy. He also seeks a monetary award for unpaid rent.

Issue(s) to be Decided

Has the tenancy ended as the result of a Notice to End Tenancy? Is the landlord owed rent?

Background and Evidence

The rental unit is the three bedroom main floor of a house.

The tenancy started in September 2009. The current rent is \$1850.00 per month, due on the first of each month. The landlord holds an \$800.00 security deposit.

The landlord testifies that there is an agreement to end the tenancy December 31, 2016. He says the agreement is contained in an email sent to him by the tenants in June 2016.

He also says that he has served the tenants with a two month Notice to End Tenancy for landlord use of property dated October 31, 2016 by attaching it to the door of the premises on that day and that a police officer saw it. He has filed a proof of service document that indicates he also sent the Notice to the tenants by registered mail.

At hearing it was disclosed that in June 2016 the parties have signed a mutual agreement to end tenancy effective March 30, 2017. The tenants take the position that they were pressured into signing it.

The question of the validity or enforceability of that mutual agreement in writing is not an issue before me at this hearing.

The landlord says the tenants owe him rent. He cannot say how much and stated at hearing that the money “does not matter.”

The tenant Mr. G.K. denies the tenants received the two month Notice. It is apparent that he had received a previous two month Notice dated May 1, 2016 and had successfully applied to cancel it.

He says the June email proposing, among other things, an end to the tenancy on December 31, 2016, was not accepted by the landlord.

He denies owing rent or money for utilities.

Ms. E.B., who is also a tenant on the written tenancy agreement, says she and Mr. G.K. did not get a copy of the Notice until after the landlord’s application. She did not see the proof of service document filed by the landlord until she obtained a copy herself from the Residential Tenancy Branch.

Analysis

The landlord’s claim for a monetary award must be dismissed. He has not presented evidence sufficient to determine what, if anything, is owed.

The June 2016 email from the tenants is an offer to the landlord to resolve various matters. In order for it to form part of an agreement to end a tenancy it must be shown to have been accepted by the landlord and that the landlord’s acceptance was conveyed to the tenants before the offer was revoked or replaced. Such an agreement must be in writing according to s 43 of the *Residential Tenancy Act* (the “Act”). There was no written offer and acceptance to constitute an agreement in this case..

I find that landlord has not established the tenants’ June email formed a mutual agreement to end the tenancy.

The landlord has not proved service of the two month Notice to End Tenancy that he relies upon. The policeman who apparently saw the document on the door was not identified nor did he or she provide evidence confirming the allegation. No proof of service by registered mail in the form of a registered mail receipt or tracking number was provided.

The tenants had been given a Notice earlier in the year 2016 and took timely steps to have it cancelled. They were familiar with the procedure. I consider it most likely that had they received this Notice they would have gone through the same steps and applied to challenge it.

Conclusion

The landlord's application must be dismissed.

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 11, 2017

Residential Tenancy Branch