



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on December 23, 2016 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”).

Both Tenants and their assistant appeared for the hearing. However, only the female Tenant provided affirmed testimony. There was no appearance by the Landlord for the 30 minute hearing. However, the Landlord did submit late documentary evidence prior to this hearing, which also related to another hearing to take place between the same parties on January 24, 2017 in order to determine an application made by the Landlord. Therefore, I first turned my mind to the service of documents for this hearing by the Tenants.

The Tenant testified that the Landlord was personally served with their Application and the Notice of Hearing package on December 23, 2016 while the Landlord was at his place of business. Based on the undisputed testimony of the Tenant and the fact that the Landlord had provided documentary evidence for this hearing, I was satisfied the Tenants served the Landlord with the required documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

The hearing continued with the undisputed evidence of the Tenants and as the Landlord failed to appear for the hearing and present evidence, I declined to consider the Landlord’s documentary evidence in making findings on the Tenants’ Application.

Issue(s) to be Decided

Have the Tenants established that the 10 Day Notice ought to be cancelled?

Background & Evidence

The Tenant testified that this tenancy for a basement suite started on July 1, 2014 on a month to month basis. The Tenant explained that an unsigned tenancy agreement was prepared by the parties. However, the one submitted by the Landlord for his application was not the one prepared by the parties. The Tenants paid a \$350.00 security deposit on June 26, 2014.

The Tenant testified that rent of \$700.00 is payable by them on the first day of each month. The Tenant explained that they pay their rent in cash every month and the Landlord gives them a rent receipt. The rent is collected by the Landlord who visits the rental unit on or before the first day of each month to collect the rent. The Tenant explained the Landlord requested that he collect the rent each month in cash as he did not want the Tenants to be coming to his place of work or his residence to give rent.

The Tenant testified that the Landlord failed to collect rent on December 1, 2016 on the day it was due. Instead, the Landlord appeared at the rental unit on December 11, 2016 with his daughter to collect the rent. The Tenant informed the Landlord that they would only be paying rent in the amount of \$400.00 pursuant to a verbal agreement they had to make a \$300.00 deduction from rent for septic tank repairs the Tenants had undertaken.

The Tenant explained that the Landlord reneged on the verbal agreement and instead demanded full rent. The Tenant testified that she asked the Landlord to remain at the rental unit while she discussed the matter with the male Tenant; however, five minutes later, the Landlord was seen driving off.

The Tenant confirmed receipt of the 10 Day Notice on December 19, 2016 by registered mail. The 10 Day Notice dated December 12, 2016 was provided into late evidence by the Landlord and the contents were confirmed by the Tenant. The 10 Day Notice shows a vacancy date of December 22, 2016 due to \$700.00 of unpaid rent due on December 1, 2016. The Tenant stated that they disputed the 10 Day Notice on December 23, 2016 because the Landlord had failed to collect the rent from them.

The Tenant testified that she contacted the Landlord on December 12, 2016 and explained that she would be providing him the full rent. However, the Landlord did not come back to the rental unit until December 29, 2016 to collect the rent. The Tenant testified that on December 29, 2016 she paid the Landlord for December 2016 rent and also paid \$700.00 for January 2017 rent.

The Tenant testified that she received from the Landlord two rent receipts which she had faxed in as evidence to the Residential Tenancy Branch for this hearing. However, that evidence was not before me. As it was the Landlord that issued the Tenants with these receipts and would have been aware of the existence of this evidence, I allowed the Tenants to supply me a copy of these receipts into evidence after this hearing pursuant to Rule 3.19 of the Dispute Resolution Rules of Procedure.

The Tenant testified that the rent receipts provided to her by the Landlord did not contain any information with regards to the 10 Day Notice still applying to this tenancy. The Tenant testified that when she provided the Landlord with the monies on December 29, 2016, she informed the Landlord that the monies would cancel the December 12, 2016 10 Day Notice. The Tenant testified that the Landlord agreed to this.

Analysis

Section 26 of the Act requires a tenant to pay rent whether or not the landlord complies with the Act, unless the tenant has a right to deduct or withhold rent. In this case, I am satisfied the Tenants applied to dispute the 10 Day Notice within the five day time limit provided by Section 46(4) (b) of the Act after receiving it by mail on December 19, 2016.

The Landlord failed to appear for the hearing and present evidence with respect to the circumstances that led up to issuing of the 10 Day Notice and the events that transpired thereafter. As the Landlord failed to appear for the hearing, I find the Landlord has failed to prove the 10 Day Notice.

Furthermore, I find the evidence before me in this case suggests that the Landlord has re-instated the tenancy by accepting rent. I accept that there are no rental arrears in this tenancy because the Landlord has accepted rent for December 2016 and January 2017 from the Tenants. I am satisfied by the Tenant's oral and rent receipt evidence that the Landlord failed to give sufficient information or an indication that he was still pursuing the ending of the tenancy after accepting rent monies on December 29, 2016 for this tenancy.

Conclusion

The Landlord failed to appear for the hearing to prove the 10 Day Notice and the tenancy has been re-instated. Therefore, I grant the Tenants' Application to cancel the

December 12, 2016 10 Day Notice. The tenancy will continue until such time it is ended in accordance with the Act.

However, the parties are cautioned to take steps to establish the method of rent payment for this tenancy in writing to ensure that future disputes do not arise on this issue.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: January 23, 2017

Residential Tenancy Branch