



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON-HYMARK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR MNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and a monetary order for compensation for repairs done by the tenant pursuant to section 67.

Both parties (2 tenants, 2 landlords and a property manager) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and the tenant confirmed receipt of the landlord's evidentiary submissions for this hearing.

Preliminary Matter: Late Evidence

At the outset of the hearing, the tenant testified that he was at the Residential Tenancy Branch to submit materials for the hearing. He testified that he did not know he had to provide his evidence in advance. He also testified that he did not know he had to provide his evidence to the respondent/landlord. The timelines and requirements for service are necessary to ensure both parties a fair hearing. There must be no question that both parties must be fully aware of the case they have to meet and be sufficiently served with all of the other party's materials.

While the tenant will be hindered in his ability to support his own application, I cannot allow the tenant to submit evidence at the time of the start of this hearing and without any provision of the materials to the landlord/respondent. To allow the tenant a further opportunity to serve his evidence does not align with the principles and objectives of the dispute resolution process. The tenant must follow the instructions provided in the preparation for a Residential Tenancy Branch hearing that was scheduled one month

ago. The Notice of Hearing that forms the main page of the materials sent to each party clearly states,

Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

I decline to consider the late evidentiary submissions by the tenant.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to a monetary order to be compensated for repairs done to the rental unit?

Background and Evidence

The property manager testified on behalf of the landlord that there is no formal residential tenancy agreement between the tenant/occupant of the landlord's property and the landlords. The landlords both testified that they purchased the property on July 2016. The landlords testified that, on purchasing the property, they attended to the property and met SH and her family, including daughter KH. They resided in the rental unit. The landlords testified that they lost contact with SH in late October and that, on December 31, 2016, SH's daughter (KH) was arrested on the property.

The tenant testified that his tenancy began on September 1, 2016 when he agreed to rent a house from KH with a rental amount for this unit was established at \$1400.00. The tenant testified that the tenant paid this rental amount to KH from September 1, 2016 to February 1, 2017. Both parties testified that the tenant has not paid any rent to the current landlords. The landlords and property manager provided undisputed testimony that they have received no security deposit from the tenant.

The landlords submitted 2 letters sent to the tenant. The first letter, dated February 1, 2017 and addressed to KH provided the landlord's contact information and a request to contact ASAP. A second letter, dated February 6, 2017, addressed to the tenant indicated that he has missed 3 appointments to discuss the payment of rent with the landlord and requesting proof of rent payment previously. The property manager testified that she spoke to the tenant by phone and he advised that he had paid the rent. The property manager requested proof of payment in order to sort out any miscommunication.

As a result of the tenant's failure to provide proof of rental payments, the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlords issued the 10 Day Notice on February 6, 2017 indicating \$1400.00 in rental arrears. The landlord testified that the tenant did not pay rent of \$1400.00 due on February 1, 2017. The landlord testified that the tenant has paid no rent to the current landlords at this point in time.

At this hearing, the tenant applied to cancel the landlord's 10 Day Notice and also applied for a monetary award of \$365.00 for repairs to the unit at the cost of the tenant. The tenant testified that these repairs were completed without consultation of the current landlords and, in fact, prior to the current landlords' possession of the residential premises. The tenant did not submit, in a timely manner, documentary materials for consideration at this hearing.

Analysis

Given the conflicting testimony, this case partly hinges on a determination of credibility. In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content and the commonalities in their testimony. The demeanor of both parties at the hearing, while agitated by their circumstances, was moderated. Both the tenant and the landlords answered questions in a candid manner, and never wavered in their version of events. The testimony of the landlord with respect to the former tenant, SH and daughter KH supported the submissions of the tenant and vice versa. While each party's version of events were shaded by their particular perspective, it seems clear that both the landlord and the tenant were equally duped by this former tenant KH.

In light of all of the evidence before me, I am persuaded that there are insufficient grounds to end the tenancy in these particular and unique circumstances. Therefore, the tenant's application to cancel the notice to end tenancy dated February 6, 2017 is granted. The tenant provided sworn testimony that he paid rent to the former tenant. I find that the current landlords were not paid rent for February and March 2017 As a result of the confusion and misinformation.

At this hearing, the tenant sought to cancel the landlord's 10 Day Notice for Unpaid Rent for the month of February 2017. I note that the landlord advised they have issued a 10 Day Notice to End Tenancy for the month of March 2017. I note that the tenant conceded he had not paid March 2017 rent as he was confused by the circumstances and perhaps given poor advice. I note that the tenant now has a contact phone number, address and contact person (the property manager) for the current landlords. The

tenant has an obligation, pursuant to section 26 of the Act, to pay his ongoing rent as well as any rental arrears within the timelines permitted by the Act. The tenant also has a responsibility to contact the current landlords with any tenancy related issues including but not limited to rent payment and repair requests.

With respect to the tenant's application for a monetary award, I find that the tenant has not presented evidence that sufficiently shows that the materials and labour costs for repairs to the rental or that these repairs were requested of the current landlords. Based on all of the evidence, I find that the tenant is not entitled to cost of repairs to the date of this hearing. I dismiss the tenant's application for a monetary award without leave to reapply.

Conclusion

I grant the tenant's application to cancel the 10 Day Notice to End Tenancy dated February 6, 2017. The tenancy shall continue.

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: March 22, 2017

Residential Tenancy Branch