



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application brought by the tenant(s) requesting an Order cancelling a Notice to End Tenancy.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent.

Background and Evidence

This tenancy began on August 1, 2015 with a monthly rent of \$900.00, due on the first of each month.

On January 31, 2017 the landlord served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent claiming that, at that time, there was a total of \$2160.00 in rent outstanding.

The tenant's advocate/agent testified that they believe there is no rent outstanding and stated that they have provided documentation that shows that the tenant has made the following payments towards the rent:

payments made by the Homeless Outreach Prevention Program	\$3560.00
Payments made by the Ministry for Social Development and Social Innovation	\$10,560.00
Total	\$14,120.00

The tenant's advocate/agent further testified that the tenant has also made numerous cash payments, for which the landlord has failed to give any receipts. She further states that there are witnesses to these payments.

The tenant's advocate/agent further argued that the intent to rent form that was given to the ministry by the tenant states that utilities are included in the rent, and therefore any payments that the tenant has made towards utilities should also be credited towards the rent.

The tenant's advocate/agent therefore argues that, at this time, there is no rent outstanding, other than the March 2017 rent, which was held by the Ministry because of this dispute, however, they have spoken to the ministry and that has now been mailed to the landlord and therefore he should be receiving that soon.

The landlord testified that the tenant has always been given receipts for any cash payments that were ever made, and that he does not agree that there is no rent outstanding this time.

The landlord further testified that utilities were not included in the rent, as he never includes utilities in the rent, and the upper portion of the intent to rent form was filled out entirely by the tenant after he had included the landlord information at the bottom. He further states that the tenant was aware that utilities were not included and yet she checked off the box that utilities were included, without his knowledge or agreement.

In response to the landlord's testimony the tenant testified that the landlord never gave receipts for cash paid.

The tenant further testified that the landlord had filled out the entire intent to rent form and it was the landlord the checked off the box that utilities are included.

In response to the tenants testimony the landlord stated that he did not fill out the upper portion of the intent to rent form, and argued that that the handwriting is even different on the upper portion than it is under the landlords information section.

Analysis

It is my finding that the tenant has not met the burden of proving that all rent due to the landlord has been paid.

This tenancy began on August 1, 2015 and therefore, at the time that the Notice to End Tenancy was given, this tenancy had been in place for 18 months, and therefore the total amount of rent that should have been paid over that period is \$16,200.00.

According to the documents provided by the tenant, the total amount paid by the Homeless Outreach Prevention Program was \$3560.00, and the total amount paid by the Ministry for Social Development and Social Innovation was \$10560.00, for a total amount of \$14,120.00.

Therefore there is a difference between the amount that should have been paid, and the amount that was paid, of \$2080.00.

The tenant's advocate/agent has argued that the tenant made extra cash payments for which she received no receipts, however the landlord has denied ever receiving extra cash payments, and although the tenant's state they have witnesses to these payments, no witnesses were called. It is my finding therefore that the tenant has not met the burden of proving that any rent payments were made, over and above the amounts paid by the outreach program or the ministry.

Further, although the tenant has argued that payments were made towards utilities even though utilities were to be included in the rent, it is my finding that the tenant has not met the burden of proving that utilities were to be included in the rent. First of all, as it states on the intent to rent form, an intent to rent form is not a tenancy agreement. Secondly, the landlord has argued that the tenant had filled in the upper portion of the intent to rent form, and argued that the handwriting was different. After inspecting the intent to rent form I accept the landlord's claim that the tenant filled out the upper portion of the intent to rent form as it does appear that the handwriting under the landlord information at the bottom is different than the handwriting on the remainder of the form.

It is my decision therefore that I will not cancel this Notice to End Tenancy, and the tenants application will be dismissed.

Section 55 of the Residential Tenancy Act states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case I have examined the Notice to End Tenancy and it is my finding that it does comply with section 52 of the Act.

Conclusion

I therefore dismiss this application without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, pursuant to Section 55 of the Act, enforceable 2 days after service on the tenants.

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 09, 2017

Residential Tenancy Branch