



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) under the *Residential Tenancy Act* (the “Act”) by the tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 22, 2017 (the “10 Day Notice”) and for a monetary order in the amount of \$482.42 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenants and the landlord attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties confirmed that they have received and had the opportunity to review the documentary evidence served upon them by the other party prior to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated more than one matter of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that the monetary claim of the tenants listed in their Application for Dispute Resolution is not sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to set aside the 10 Day Notice. The tenant’s monetary claim is therefore, **dismissed with leave to re-apply**.

In addition, in the middle of the hearing the landlord requested an adjournment so that the landlord could consult with his legal counsel which was denied as the hearing had already commenced and I find that reasonable due diligence on the part of the landlord would have been to apply in advance of the hearing for an adjournment if he could not obtain legal counsel in advance for the scheduled hearing or at the very least, immediately at the start of the hearing, which the landlord failed to do. I have considered the criteria for adjournments pursuant to Rule 7.9 of the Residential Tenancy Branch

Rules of Procedure and find that there would be prejudice to the tenants who attended the hearing and were ready to proceed if I were to grant an adjournment and have declined the landlord's request as a result.

Issue to be Decided

- Should the tenancy end based on the 10 Day Notice?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2012. Monthly rent was originally \$700.00 per month and is due on the first day of each month and was increased during the tenancy to the current amount of \$735.00 per month. The parties also referred to a previous decision dated April 23, 2015, (the "previous decision") the file number of which has been included on the cover page of this decision for ease of reference. In that previous decision, the arbitrator made a finding that the tenant and her roommate bear the cost of 2/3 of the cost of hydro and the landlord, as he lives alone, bear 1/3 the of the cost of hydro. In that decision, the landlord's rent increase dated February 23, 2015 was found to be invalid and was of no force or effect.

The tenants confirmed that they were served with the 10 Day Notice dated March 22, 2017 on March 22, 2017 and disputed the 10 Day Notice the next day on March 23, 2017. The 10 Day Notice indicates that \$735.00 rent was owed as of March 1, 2017 and the effective vacancy date is listed as April 1, 2017.

The landlord confirmed that the tenants rent for April 2017 was accepted and paid in full by the tenants. The parties disputed whether any of the \$735.00 amount for rent for March 2017 was paid due to the tenants alleging that the landlord failed to pay his 1/3 portion of the hydro bill for January and February and that the total bill was \$921.79. The landlord's testimony regarding paying previous hydro bills was inconsistent and vague. When asked if he paid the January and February hydro bill he said "I guess so in March when the tenant deducted that from rent."

The landlord was asked if he provided a receipt for April 2017 rent and he replied that he signed a receipt for the tenant when the tenant brought him a receipt.

The landlord stated that he wished I considered the documentary evidence but failed to present specific evidence for me to review and consider during the hearing. The landlord also stated that the tenancy has to end due to the sale of the rental property.

The landlord was informed that there was no evidence of a 2 Month Notice to End Tenancy for Landlord's Use of Property being served on the tenants to which the landlord replied that he would serve one right away as the tenancy needs to end in 60 days.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, regarding the 10 Day Notice, I find that while an amount may still be owed for rent, I find the landlord has subsequently reinstated the tenancy since issuing the 10 Day Notice by accepting full rent for April 2017 and issuing a rent receipt. I also note that there was no evidence presented that the receipt indicated that the money paid was for use and occupancy only. Furthermore, I note that the landlord failed to indicate that he stated verbally to the tenants that money was being accepted for use and occupancy for April 2017. Therefore, based on the above, while the landlord is entitled to make a future claim for unpaid rent owed, if any, I make no finding on the amount owed, if any, as of the date of the hearing based on the vague testimony of the landlord.

Regarding the landlord's documentary evidence, it is the responsibility of the landlord to present and refer to his specific evidence for an arbitrator to consider the weight and relevance of that evidence. In other words, it is not up to the arbitrator or appropriate for an arbitrator to act as agent for the landlord and search for evidence that is not presented during a hearing. An arbitrator is an impartial decision maker that makes a decision based on the evidence presented during a dispute resolution hearing.

I find the 10 Day Notice is of no force or effect as the landlord has reinstated the tenancy by accepting rent for April 2017 in full as supported by the landlord's own testimony during the hearing.

I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The 10 Day Notice is of no force or effect as the landlord has reinstated the tenancy by accepting rent in full for the month of April 2017 as confirmed by the parties during the hearing.

The tenancy shall continue until ended in accordance with the *Act*.

I make no findings on the amount owed, if any, for the month of March 2017.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 28, 2017

Residential Tenancy Branch