



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Both tenants attended the hearing and each gave affirmed testimony. The landlord also attended with a person introduced as the landlord's representative. The landlord and the representative each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing, the landlord's representative testified that he had provided evidentiary material, being a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property and a Proof of Service document, to the Residential Tenancy Branch roughly at the end of June, 2017. The evidentiary material is not on file, and during the hearing, I emailed the Residential Tenancy Branch to ascertain whether or not the material could be located. The Information Officer replied that the material could not be located, nor were there any notes on the Case Management System that any material had been received from the landlord or the landlord's representative.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's representative testified that this fixed term tenancy began on September 10, 2012, expired on September 10, 2016 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 per month is payable on the 10th day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a half-duplex, and the landlord does not reside on the rental property. A written tenancy agreement exists, but a copy has not been provided for this hearing.

The tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided by the tenants as evidence for this hearing. It is dated June 14, 2017 and contains an effective date of vacancy of June 25, 2017 for unpaid rent in the amount of \$1,500.00 that was due on May 10, 2017, and "\$100 from April, 2017 plus \$1,500 to June, 2017." The landlord's representative testified that the tenants paid the rent on June 20, 2017, including the \$100.00 owed from April, rent owed for May 10 and rent for June 10, 2017.

On June 14, 2017 the landlord also caused the tenants to be personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property. No one has provided a copy for this hearing, however the landlord's representative testified that it is dated June 14, 2017 and contains an effective date of vacancy of September 10, 2017. The reason for issuing it was read by the landlord's representative who testified that it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse)."

The landlord's daughter will be moving into the rental unit right after the tenant vacates. The landlord's daughter can't save money so is moving into the rental unit. The tenants were provided with the compensation required by the *Act* by not paying any rent for August 10, 2017.

The landlord testified that her daughter is moving in because the landlord believes it's a safer place than where her daughter now resides, and to help her out. Also, the landlord doesn't want to be a landlord anymore and wants her daughter to be there. The landlord is aware of the penalty under the *Residential Tenancy Act* if her daughter doesn't move in within a reasonable time and stay for at least 6 months.

The first tenant (CAM) testified that she had been hospitalized and the day of her release, the landlord gave the tenant a handwritten letter stating that the tenant had to move out. A copy has been provided for this hearing. The Residential Tenancy Branch told the tenant that it wasn't valid, and the tenant paid the rent.

The tenant also testified that 3 months ago the landlord told the tenant that her daughter was evicted from her rental unit, but she still lives there.

The tenants have the rent available for August but were told to not pay it because of compensation required.

The tenant didn't provide a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property because she didn't know she was supposed to.

The second tenant (KM) testified that prior to receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants attempted to pay the rent but the landlord refused the money and didn't give a reason. The notice was placed under the doormat, and the tenants didn't receive it or notice it until sometime later.

Closing Submissions of the Landlord's Representative:

The landlord gave a handwritten notice to end the tenancy not knowing that an approved form was required, but upon learning that, served the tenants with the proper form. The tenants paid the rent and were served properly with the Two Month Notice to End Tenancy for Landlord's Use of Property.

Closing Submissions of the Tenants:

The landlord refused rent and then gave a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

Firstly, with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the *Residential Tenancy Act* states that where a tenant pays the rent within 5 days of service, the notice is of no effect. In this case, the landlord's representative testified that the tenants paid the rent on June 20, 2017, but did not provide the date or method of service. The tenant testified that it was under the doormat and the tenants received it sometime later. The *Act* requires that it be served by placing it in a mailbox or attaching it to a door or other conspicuous place. If it's hidden under a doormat, that is not conspicuous. However, it's dated June 14, 2017 and the landlord's representative testified that that the tenants paid the rent on June 20, 2017. Even if I were to accept

that it was left in a conspicuous place, it would be deemed to have been served 3 days later. If it were served on the date of issuance, June 14, 2017, it would be deemed to have been served on June 17, 2017. The tenants paid the rent within 5 days, and I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is of no effect, and I hereby cancel it.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*.

Neither party has complied with the Rules of Procedure. The tenant is required to provide a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, and the landlord is required to provide the tenant with a copy of any evidence the landlord intends to rely on.

The tenant testified that the Proof of Service document was not given to the tenants. I have no reason to disbelieve the landlord's representative that he served the tenant with the Two Month Notice to End Tenancy for Landlord's Use of Property on June 20, 2017 and provided a copy of the notice to the Residential Tenancy Branch roughly at the end of June, and it may very well have been a clerical error that I don't have it. However, if that is the case, it's clear to me that the landlord served the tenants with the notice, then provided a copy to the Residential Tenancy Branch along with a Proof of Service Document, but did not serve the tenant with the evidence that the landlord intends to rely on. Each party must do so, even if the other party already has it. It's important that each party knows what evidence is before me. The landlord's representative offered to provide a copy after the hearing commenced, however I am not satisfied that the landlord has complied with the Rules of Procedure with respect to serving evidence upon the tenants, and I decline to consider it.

I make no findings with respect to the landlord's good faith intent, however, in the absence of a copy, I cannot be satisfied that it is in the approved form, and therefore I cancel it.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 14, 2017 is hereby cancelled.

The Two Month Notice to End Tenancy for Landlord's Use of Property dated June 14, 2017 is hereby cancelled and the tenancy continues.

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: August 16, 2017

Residential Tenancy Branch