



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 9, 2017. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

This tenancy started on September 1, 2017 as a fixed term tenancy with an expiry date of August 31, 2018. Rent on the tenancy agreement signed August 7, 2017 is \$3,000.00 payable in advance of the first day of each month. The Tenants paid a security deposit of \$1,500.00 at the start of a previous tenancy which began in September, 2016. A move in condition inspection report was completed in September, 2016 but no condition inspection report has been completed for this tenancy starting September, 2017. .

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid rent dated September 2, 2017 on September 2, 2017 by personal delivery. The Effective Vacancy Date on the Notice is September 12, 2017. The Landlord said that prior to the Tenants moving in he disgusted a change of the rent from \$3,000.00 per month to \$3,600.00 per month with the Tenant F. A. The Landlord said he thought that the Tenant F.A. had agreed. The Landlord said this agreement was verbal on a

telephone call on July 22, 2017. The Landlord continued to say that the tenancy agreement he sent to the Tenants on August 7, 2017 he had mistakenly put the rent as \$3,000.00 when he believed it was agreed to be \$3,600.00 per month. The Landlord submitted an email dated July 21, 2017 to show the rent change was discussed with the Tenant F.A. The Landlord said this was an honest mistake and the rent is \$3,600.00 per month. The Landlord continued to say that the Tenants submitted post dated cheques for \$3,000.00 per month which is \$600.00 short of the new rental amount, which means there is unpaid rent of \$600.00 for September and \$600.00 for October, 2017. The Tenants are living in the unit and the Landlord's application says if the rent is not paid the Landlord can end the tenancy.

The Tenant said the during the dispute resolution application process they now understand this is not a rent increase but a new tenancy. As such Tenant R.H. said there was a discussion with one of the Tenants about a rent increase but the Tenants did not agree to the increased rental of \$3,600.00. Tenant R.H. said that the email from Tenant F.A. on July 21, 2017 disputes the changed rental amount. Tenant F.A. said he did not agree to the rental of \$3,600.00 during a phone call with the Landlord on July 22, 2017. Further the Tenants submitted an email from the Landlord dated August 27, 2017 that says **"I just caught my error in the new lease I sent you earlier. I'm sorry about that, but the attached is the corrected and current one. All of you please sign and initial, I can pick it up when I come for the walk-thru September 2nd 9-9:30"**

Tenant R.H. continued to say that when they received the tenancy agreement from the Landlord on August 7, 2017 the rental amount was \$3,000.00 which they had agreed to. All four Tenants and the Landlord signed the tenancy agreement dated August 7, 2017. In addition Tenant R.H. said the security deposit (indicated as half a months rent) on the tenancy agreement is for \$1,500.00. Further the security deposit of \$1,500.00 and the rent amount of \$3,000.00 to be paid by post dated cheques were confirmed in an email from the Landlord dated August 7, 2017. Tenant R.H. continued to say that the Landlord sent an email on August 27, 2017 stating he made a mistake and the rent should be \$3,600.00. The Tenants said they did not agree to this rental amount and the signed contract is for a rental amount of \$3,000.00. The Tenants submitted post dated cheques to the Landlord for \$3,000.00 per month and the cheques for September and October, 2017 have been cashed. The Tenants said the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent is based on a rental of \$3,600.00 per month which is in error the rent is \$3,000.00 per month; therefore there is no unpaid rent and their application to cancel the Notice to End Tenancy for Unpaid Rent should be successful.

The Tenants were given an opportunity to consider a settlement agreement to adjust the rental amount if they believed the Landlord made an honest mistake. The Tenants declined the opportunity to discuss a settlement arrangement.

Analysis

I have reviewed the submitted evidence and the notes I made during the affirmed testimony of both the Landlord and the Tenants. The Landlord said he made an honest mistake by putting the amount of \$3,000.00 in the rental agreement instead of \$3,600.00. The Landlord also said he had a verbal agreement with the Tenant F.A. that the Tenants agreed to the rental amount of \$3,600.00. As a result the Landlord believes the Tenants have unpaid rent of \$600.00 for each month of September and October, 2017. The Landlord did not submit any corroborative evidence to support his statement that the Tenant F.A. verbally agreed to the rental of \$3,600.00 during the phone call of July 22, 2017.

The Tenants indicated that Tenant F.A. disputed the rental amount of \$3,600.00 in an email dated July 21, 2017 which was submitted into evidence and this email was confirmed by the Landlord. Further Tenant F.A. gave testimony that the Tenants did not agree verbally to the rental amount of \$3,600.00 on July 22, 2017. In addition the Landlord's email of August 27, 2017 says "**I just caught my error**" which on the balance of probabilities indicates the Landlord may not have had the agreement of Tenant F.A. or all the Tenants on the rent change during the phone conversation on July 22, 2017.

A signed tenancy agreement is a contract between parties which indicates the rights and obligations of the parties who enter into that contract. The parties are bound by the terms of the contract under contract law and the Residential Tenancy Act. It should be noted as well this tenancy agreement has the following cause directly above the signature area. "**By signing this tenancy agreement, the landlord and the tenant are bound by its terms.**"

It is unfortunate that the Landlord may have made a mistake in completing the tenancy agreement. I accept the Tenants evidence and affirmed testimony that they understood the rent was \$3,000.00 as per the tenancy agreement dated August 7, 2017. Consequently I accept the tenancy agreement dated August 7, 2017 and the rental amount of \$3,000.00 per month is the rental contract and rent amount of this tenancy. Therefore I find there is no unpaid rent at the present time and I cancel the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated September 2, 2017. I order the tenancy to continue on the terms of the tenancy agreement dated August 7, 2017.

As the Tenants have been successful in this matter I order the Tenants to recover the \$100.00 filing fee for this proceeding by deducting it from one months rent or collecting the \$100.00 directly from the Landlord. To support this I have issued a monetary order to the Tenants for \$100.00.

Conclusion

I order the 10 Day Notice to End Tenancy for Unpaid Rent dated September 2, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated August 7, 2017.

A monetary Order in the amount of \$100.00 has been issued to the Tenants and this Order must be served on the Respondent in one of the ways set out in the Residential Tenancy Act.

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: October 16, 2017

Residential Tenancy Branch