



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent of January 8, 2018 and February 2, 2018 (the 10 Day Notices) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Tenant NS (the tenant) representing the interests of both tenants in this matter confirmed that the tenants received both 10 Day Notices posted on their door by the landlord on January 8, and February 2, 2018. I find that the tenants were duly served with these Notices in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' original and amended dispute resolution hearing packages posted on her door well in advance of this hearing, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The tenants did not enter any written evidence to support their assertion that they had paid the rent as required. The landlord testified that she posted copies of her written evidence on the tenants' door on or about March 1, 2018. The landlord's daughter, who assisted her during this hearing, testified that she witnessed the landlord post this written evidence on the tenants' door as declared by her mother. The tenant testified that the tenants did not receive copies of the landlord's written evidence. Based on the landlord's sworn testimony and the statement from the landlord's witness and in accordance with sections 88 and 90 of the *Act*, I accept that the tenants were deemed served with copies of the landlord's written evidence on March 4, 2018, the third day after the posting of these documents on the tenants' door. As the tenant did not have this evidence, I ensured that the landlord described each of the documents that the

landlord submitted into written evidence that had a bearing on the two 10 Day Notices that were the issue in dispute at this hearing. With respect to this point, I note that much of the landlord's written evidence had little relevance to the two 10 Day Notices.

Issues(s) to be Decided

Should the landlord's 10 Day Notices be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy?

Background and Evidence

The parties agreed that this month-to-month tenancy began on January 15, 2016. Monthly rent was set at \$750.00, payable in advance on the first of each month. The landlord currently holds a \$375.00 security deposit for this tenancy.

The landlord's 10 Day Notice of January 8, 2018 cited unpaid rent of \$750.00 as the reason for seeking an end to this tenancy. After the tenants received a further 10 Day Notice seeking the payment of \$780.00 in unpaid rent that the landlord identified as owing as of February 2, 2018, the tenants amended their original application to include cancellation of this second 10 Day Notice as part of the issues to be considered at this hearing.

There have been a number of disputes as to the payment of rent during this tenancy. The tenant maintained that some of these disputes have arisen as a result of the landlord's practice of delaying the cashing of cheques the tenants have issued to the landlord. The tenant also maintained that the landlord has not conducted an adequate or current check of the landlord's bank accounts where the tenant has deposited cheques.

The landlord claimed that the tenants have not paid rent for either December 2017 or March 2018. After describing previous efforts to obtain full payments of rent from the tenants, the landlord confirmed that by the end of November 2017, no rent was owing for this tenancy. The landlord testified that the tenant marked on a cheque given to her December 8, 2017 that this cheque was for January 2018 rent. The landlord maintained that the only payment she has received from the tenant for February 2018 was a \$780.00 payment received on February 2018. She applied this cheque to the tenant's unpaid rent owing for February 2018. She said that she has received no payment for March 2018 rent. The landlord testified that she recently agreed to allow payments to be made to her bank account by direct deposit after disputes arose regarding the previous systems of cash payments and cheque payments.

The tenant asserted that all monthly rent has been paid. The tenant said that on January 4, 2018, he went to the landlord's bank and deposited a cheque directly into the landlord's bank account, using a cancelled cheque he had received to enable him to make this deposit into her account. The tenant also claimed that a \$780.00 payment he made to the landlord on February 28, 2018 was for rent that became owing for March 2018. The tenant also testified that he had

provided the landlord with a copy of a receipt he had obtained for one of these payments through the landlord's bank. The tenant also referenced his own banking statements, but did not enter copies of these documents into written evidence.

Analysis

While I have turned my mind to all the documentary evidence, including the landlord's receipts, copies of statements from her bank, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Although this is the tenants' application, the burden of proof in cases where a notice to end tenancy has been issued rests with the landlord to demonstrate that the reasons cited on the notice to end tenancy represent valid reasons to end the tenancy.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

In this case, the sworn testimony of the tenant regarding receipts he referenced was not supported by any written evidence he supplied for this hearing. Although the landlord supplied some written evidence, these documents did not provide a complete record of all of the months in dispute. The landlord also testified that receipts have not been issued to the tenants for all of the payments they have made during their tenancy, which had an effect on the recent history of this tenancy. The landlord did not enter into written evidence any comprehensive and clear rent ledger or summary of payments made and payments outstanding. Rather, I found that the landlord provided a somewhat piecemeal approach to support her assertion that rent remains owing for December 2017, and that rent received from the tenants in late February was for unpaid February 2018 rent, and not for March 2018 rent, as was claimed by the tenant.

During the hearing, the tenant offered repeatedly to attend the landlord's bank with her, so that the two parties could determine together whether payments the tenant claims to have made were in fact entered into her bank accounts. The tenant offered to vacate the rental unit if the payments he claims to have made cannot be located by the landlord's bank.

Given the confusing state of the records kept by the landlord and the disputed evidence regarding which months the key payments were designed to address, I find insufficient evidence to confirm the landlord's claim that the rent identified as owing in the January and February 10 Day Notices constituted sufficient grounds to end this tenancy for unpaid rent. For this reason, I allow the tenants' application to cancel the two Notices to End Tenancy currently before me.

In coming to this decision, I recognize that there remains a dispute as to whether rent paid by the tenant in February 2018 should be applied to rent that was already owing, as the landlord maintains, or to March 2018, as the tenant contends. Similar questions could be raised regarding payments the tenant claims to have made for December 2017 and January 2018. No 10 Day Notice has been issued by the landlord for March 2018.

As this tenancy is continuing and in accordance with the powers delegated to me pursuant to section 62 of the *Act* to issue orders as I see necessary in order to address the issues in dispute and as discussed during this hearing, I issue the following orders regarding this ongoing tenancy:

1. I order the parties to exchange text messages to identify a time and date by the end of March 2018, at which they will meet at the landlord's bank to settle the issue as to which payments from the tenant(s) have been entered into the landlord's bank accounts.
2. I order the tenant and the landlord to meet at the landlord's bank before April 1, 2018 to determine whether payments the tenant claims to have entered into the landlord's bank accounts have been received by the landlord.
3. In the event that this tenancy is to continue, I order the parties to arrange for an acceptable method by which receipts are to be issued for any further payments made by the tenants towards this tenancy, even those issued by way of direct deposit.

Conclusion

I allow the tenants' application to cancel the 10 Day Notices of January 8, 2018 and February 2, 2018. Those 10 Day Notices are set aside and are of no continuing effect.

I issue the following orders to the parties:

1. I order the parties to exchange text messages to identify a time and date by the end of March 2018, at which they will meet at the landlord's bank to settle the issue as to which payments from the tenant(s) have been entered into the landlord's bank accounts.
2. I order the tenant and the landlord to meet at the landlord's bank before April 1, 2018 to determine whether payments the tenant claims to have entered into the landlord's bank accounts have been received by the landlord.
3. In the event that this tenancy is to continue, I order the parties to arrange for an acceptable method by which receipts are to be issued for any further payments made by the tenants towards this tenancy, even those issued by way of direct deposit.

In making this decision, I make no determination as to how much rent, if any, remains owing at this time, as that determination will need to wait until the parties meet at the landlord's bank before April 1, 2018. My decision in no way binds the landlord from issuing a further notice or

notices to end tenancy once accurate and current information is obtained from the landlord's bank with respect to the landlord's receipt of rental payments from the tenants.

In the event that either party needs to apply for dispute resolution again during this tenancy, I would strongly recommend that they consider exchanging documents to the extent possible by handing these documents to one another directly with witnesses present, or by way of registered mail. This would enable them to ensure that all written evidence to be relied upon during a hearing is received by the other party.

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 12, 2018

Residential Tenancy Branch