



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
OPRM, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on February 15, 2018. The Tenant applied to cancel a 10-Day Notice for Unpaid Rent and to recover her filing fee for this hearing. The Landlords’ Application for Dispute Resolution is dated February 19, 2018. The Landlords applied for an Order of Possession, a Monetary Order for unpaid rent and to recover their filing fee for this hearing.

Both the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing both the Landlords and the Tenant confirmed that the Tenant had moved out of the rental unit on February 28, 2018, and that an order of possession was no longer required. The Landlords stated that they wished to proceed regarding their request for a monetary order for the unpaid rent.

Issue(s) to be Decided

- Should the 10-Day Notice be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The undisputed testimony of both parties is that the Tenant originally moved into the rental unit as a roommate under a previous tenancy agreement. This previous tenancy agreement was between the Landlords and the former tenant M. The previous tenancy ended when M gave notice to the Landlords to end his tenancy as of January 31, 2018. The original tenancy agreement was a written document between the Landlords and M, the Tenant in my hearing was not a signatory to that document but she did pay rent, in the amount of \$750.00 a month, directly to the Landlord during that tenancy.

Both the Tenant and the Landlords agreed that when M gave notice to end his tenancy, they entered in to a discussion to start a new tenancy agreement for February 1, 2018. However, the terms of this new tenancy agreement had been verbal and are now in dispute between these two parties.

Both parties agreed that the Tenant gave the Landlords written notice to end her tenancy as of February 28, 2018, by text message, on January 12, 2018. However, both parties remained in discussions regarding possible options to continue the tenancy. Both parties also agreed that the Tenant paid \$750.00 in rent on February 1, 2018 and that they were both trying to find another roommate to move in to the rental unit with the Tenant and take over the room that had been vacated by M. All parties agreed that the Landlords served a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on the Tenant by posting it to the door of the rental unit on February 12, 2018, indicating an outstanding rent amount of \$750.00 at the time of service.

The Tenant confirmed that she moved out of the rental unit on February 24, 2018. The Landlords confirmed that they took back possession of the rental unit in February 28, 2018.

The Landlords testified that the rent for this tenancy was \$1,500.00 a month to be paid by the first of each month and that there was no security deposit taken for this tenancy.

The Tenant testified that her rent was \$750.00 a month, and that she had paid the Landlords a \$375.00 security deposit.

The Landlords testified that they received rent in the amount of \$750.00 from the Tenant on February 1, 2018. The Landlords also testified they knew the Tenant would have to find a new roommate in order to stay in the rental unit. The Landlords testified that they had been in discussions with the Tenant regarding two options; the options of moving the Landlord's Mother in, or finding a new roommate were discussed. The Landlords also testified that they advised the Tenant that they could not lower the rent to an amount that was more affordable to the Tenant and that another roommate was needed to be found to move in to the second room. The Landlords testified that it was their intent to have a new written tenancy agreement signed once another roommate was found that would take the second room.

The Tenant testified that she had been in discussions with the Landlords regarding finding a new roommate, and she had been attempting to find a new roommate to move into the room vacated by M. The Tenant also testified that the Landlords had been into the rent unit to show the available room to potential new roommates and that she had inquired if the rent for the full unit could be lowered so she could afford it herself. The Tenant testified that she had wanted to stay in the rental unit but that she understood another roommate would need to move in and take over the room M had vacated, as she could not afford to rent the entire rental unit on her own.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the original tenancy that the Tenant moved into the rental unit under, ended on January 31, 2018, in accordance with section 44 of the *Act*.

I find that the exchange of rent from the Tenant to the Landlords, in the amount of \$750.00 on February 1, 2018, created a new verbal tenancy agreement between these parties.

Section 13 of the *Act* requires a landlord to prepare a written tenancy agreement, that must set out amount of rent payable for a specified period.

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of roommates, the amount by which it varies;

I find that the Landlord failed to provide a written tenancy agreement as required under section 13 of the *Act*, and in doing so has breached the *Act*. A written tenancy agreement provides documentary evidence to show a clear understanding between all parties, as to the terms and conditions of a tenancy agreement. In the absence of a written tenancy agreement, I must rely on the oral testimony of the parties to confirm the terms of this tenancy.

In this case, I find that the Landlords and the Tenant have provided opposing oral testimony as to the standard terms of their tenancy agreement. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the applicant's in this case, the Landlords have the burden of proof to provide sufficient evidence to establish their claim to a Monetary Order for unpaid rent.

I find that the Landlords did issue a 10-Day Notice to End Tenancy for Unpaid Rent to the Tenant and that the Notice was delivered on February 12, 2018.

Upon review of the evidence from the parties, I noted that the dates had been altered on the Landlords' copy of the Notice. The Tenant's copy of the Notice indicates that the Notice was for non-payment of March rent in the amount of \$750.00. The Landlords' copy of the Notice shows that the date was altered to show that the Notice was for non-payment of \$750.00 for February rent.

Section 53 of the *Act* does allow for the automatic correction for incorrect effective dates on notices to end tenancy. The intent of this section, is that it ought to have been clear to all parties that there was an incorrect date on the notice, and that it was just a simple clerical error when compared to their tenancy agreement. However, as in this case, in the absence of a written tenancy agreement it cannot be assumed that the party receiving the notice ought to have understood the intent of the party serving the notice.

Furthermore, I find that the Tenant did apply to cancel the Notice as allowed under section 46 of the *Act*. In the Tenant's application to cancel the Notice and in her sworn testimony, she stated that she had paid her rent in full for February and that she had given her notice to end tenancy as of February 28, 2018. It was unclear to her as to why she had received the Notice from the Landlords for rent due in March 2018.

I accept the Tenant's testimony, that she understood that her rent was \$750.00 per month and that she had paid in full for February 2018. I also accept that the Tenant was confused as to why she was receiving a Notice for non-payment rent for March in the middle of February as she had given her notice to end her tenancy at the end of that month.

I find that the lack of a written tenancy agreement created confusion regarding the standard terms of this tenancy agreement, and that combined with the differences in the dates on the Notice to end tenancy served by the Landlords led to this dispute between these parties. Furthermore, I find that this dispute could have been avoided had the Landlords complied with the *Act*, and created a written tenancy as required.

I find that the Landlords are in breach of section 13 of the *Act*, by not preparing a written tenancy agreement with this Tenant. Therefore, I am dismissing the Landlords application without leave to reapply.

Furthermore, I find the Notice was of no effect under the Act and I must allow the Tenants' application to cancel the Notice.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application.

Conclusion

The Landlords' application is dismissed, without leave to reapply.

I grant the Tenant's application, and I find the Notice was of no effect under the *Act*.

Pursuant to sections 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$100.00 for the return of the filing fee. The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 8, 2018

Residential Tenancy Branch