



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 23, 2018 (the “Application”). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 16, 2018 (the “Notice”).

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord provided the correct spelling of his first name and I amended the Application to reflect this. This is also reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package and Tenants’ evidence. The Tenants testified that they did not receive any evidence from the Landlord. The only evidence submitted by the Landlord was the following: the Notice; Proof of Service of the Notice; and a Direct Request Worksheet. I have not relied on this evidence in this decision.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the relevant documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

The Landlord testified as follows in relation to a tenancy agreement. There is an oral agreement between him and the Tenants in relation to the rental unit. The tenancy started a year and a half ago for Tenant T.K. and D.R. and recently for Tenant V.R. The tenancy is a month-to-month tenancy. Rent is \$1,200.00 per month due on the first day of each month. There was no security deposit paid.

Tenant D.R. testified as follows in relation to a tenancy agreement. There is an oral agreement between the Landlord, Tenant T.K. and Tenant D.R. and a separate agreement between the Landlord and Tenant V.R. The tenancy for Tenant T.K. and Tenant D.R. started June of 2017. The tenancy with Tenant V.R started recently. The tenancies are month-to-month tenancies. Rent is \$600.00 per month for Tenant T.K. and Tenant D.R. and \$600.00 per month for Tenant V.R. Rent is due on the first day of each month. There was no security deposit paid.

Tenant D.R. testified that rent for him and Tenant T.K. has always been \$600.00 per month. He said another individual lived in the unit previously and paid rent to the Landlord separately. He testified that this individual moved out and Tenant V.R. moved in.

Tenant V.R. testified that he has a separate tenancy agreement with the Landlord and that Tenant T.K. and Tenant D.R. are responsible for paying \$600.00 to the Landlord and he is responsible for paying \$600.00 to the Landlord.

The Landlord agreed there was a previous tenant that paid \$600.00 of rent to him. He agreed Tenant T.K. and Tenant D.R. pay \$600.00 in rent and Tenant V.R. pays \$600.00 in rent. He took the position rent is \$1,200.00 for the entire place and that the Tenants are all under one tenancy agreement. The Landlord said he had a verbal agreement with Tenant V.R. that he could move into the rental unit.

The Notice was submitted as evidence. It states the Tenants failed to pay \$700.00 in rent due July 1, 2018. It is addressed to all three Tenants and refers to the rental unit

address. It is signed and dated July 16, 2018 by the Landlord. It has an effective date of July 26, 2018.

Both parties agreed the Notice was served on Tenant T.K. personally July 16, 2018.

Tenant D.R. confirmed the Application was filed July 23, 2018.

The Landlord testified that \$700.00 in rent was outstanding as of July 1, 2018 and that the Tenants paid no rent since the Notice was issued. The Landlord said Tenant T.K. and Tenant D.R. had failed to pay \$600.00 as of July 1, 2018 and Tenant V.R. had failed to pay \$200.00 as of July 1, 2018. The Landlord testified that the Tenants pay rent in cash and he does not provide receipts for these payments.

The Tenants disputed that \$700.00 was outstanding as of July 1, 2018. The Tenants testified that they paid rent in full by the first of each month for July, August and September. The Tenants said there was no outstanding rent as of July 1, 2018.

Neither party provided any evidence to support their position.

Analysis

I do not find it necessary to determine whether the Tenants are tenants under the same tenancy agreement or separate tenancy agreements given my decision. There was no issue that a tenancy agreement exists between the Landlord and all three Tenants.

Section 46 of the *Residential Tenancy Act* (the “Act”) allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

- (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Rule 6.6 of the Rules of Procedure states that a landlord must prove the reason they wish to end the tenancy when tenants apply to cancel a notice to end tenancy.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

There is no issue that the Tenants received the Notice July 16, 2018 and disputed it July 23, 2018, within the five-day time limit set out in section 46(4) of the *Act*.

The Tenants testified that they paid rent July, August and September and that there was no outstanding rent as of July 1, 2018. The Landlord testified that the Tenants have not paid rent for July, August or September. Neither party provided evidence to support their position. The Landlord acknowledged that he does not provide the Tenants with receipts for the rent which is paid in cash. In the circumstances, I find the Landlord has not met his onus to prove the grounds for the Notice and therefore the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *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 *Act*.

Dated: September 13, 2018

Residential Tenancy Branch