



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”). The Landlord applied for an Order of Possession based on a 10 Day Notice and for a Monetary Order for unpaid rent. Both parties also applied for the recovery of the filing fee paid for their applications.

The Landlord and the Landlord’s spouse (the “Landlord”) were present for the duration of the teleconference hearing, as was the Tenant. The parties confirmed that they each received a copy of the Notice of Dispute Resolution Proceeding package regarding the other party’s application and that they each received a copy of the other party’s evidence. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid rent is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were not in agreement as to the details of the tenancy. The Tenant stated that the tenancy began on November 1, 2017 when he rented the upstairs rental unit of the home. The tenancy began through a verbal agreement. He stated that rent was \$1,000.00 per month and no security deposit was paid.

A tenancy agreement was submitted into evidence that was signed by both parties on April 28, 2018. The agreement was for a fixed term of one year from May 1, 2018 to May 1, 2019 for a monthly rent of \$2,400.00.

The Tenant stated that he previously had a verbal agreement with the Landlord but was asked to sign the written tenancy agreement when the Landlord needed the information for the renewal or refinancing of the mortgage. He stated that he did not agree to pay \$2,400.00 a month and that the agreement he signed that day was for \$1,000.00 on a month-to-month basis. He pointed out that a change was made on page 2 of the tenancy agreement that was not initialled by him and stated this as evidence that he did not agree to the amount and did not sign this agreement.

The Tenant stated that the tenants in the downstairs rental unit of the home moved out in April 2018 and after they moved out, the Landlord began completing renovations on the downstairs rental unit. He stated he has been paying \$1,000.00 in monthly rent since the tenancy began in November 2017. In April 2018, the Landlords asked if he would move into the downstairs unit when it was done, which he agreed to.

The Landlord agreed that the tenancy began in November 2017 through a verbal tenancy agreement and was to be for a short time period as they had plans to demolish the home. However, they later changed plans and decided not to demolish the home. The tenancy agreement dated April 28, 2018 states that a deposit of \$1,200.00 is due, but the Landlord agreed that no security deposit was paid.

The Landlord stated that on April 28, 2018, the Tenant reviewed and signed the tenancy agreement with them with the understanding that should he rent the full house it would be \$2,400.00 per month. They agreed that this document was signed as it was required for mortgage refinancing.

They stated that at the time of signing the tenancy agreement, they had a verbal arrangement with the Tenant that he would move into the downstairs unit when the renovations were completed. The Landlord stated that the amount of \$2,400.00 was the amount agreed upon should the Tenant rent the full house.

The Landlord stated that prior to signing the tenancy agreement the Tenant was paying \$1,000.00 to live upstairs. They testified that he continued to pay \$1,000.00, although they offered him a reduced rent some months due to him helping with the renovations in the downstairs unit.

The Landlord stated that they provided two letters to the Tenant stating that he could move into the downstairs unit on November 1, 2018 for a monthly rent of \$1,200.00. The letters were submitted into evidence by both parties. The first states that effective October 15, 2018 the Tenant will have to vacate the upstairs rental unit and move into the downstairs unit.

The second letter states that as they did not hear from the Tenant he is to vacate the upstairs unit by October 31, 2018. The Landlord stated that the Tenant sent them a text message asking for legal notice to end the tenancy.

The Tenant stated that he would have moved into the downstairs unit, but that the renovations are not complete and the unit is not ready to be lived in. The Tenant stated that the renovations in the downstairs unit started in April 2018, while the Landlord stated that they began in May 2018.

The Landlord testified that the Tenant reported them to the city and now they are required to rent the house as one rental unit, instead of two units, which is how it was

set up when they purchased the home. They provided testimony that the renovations on the downstairs unit are complete, but that this unit can no longer be rented separately due to a requirement by the city.

The Tenant stated that he has paid \$1,000.00 per month in rent since moving into the rental unit. The Landlord stated that they have reduced his rent due to renovations completed by the Tenant, but that he now owes \$2,400.00 per month as he has not moved into the downstairs unit.

The parties agreed that the Tenant paid \$1,000.00 for November and December 2018. The Tenant submitted copies of the money orders into evidence showing the rent payments for November and December 2018.

On November 4, 2018, the Landlord served the Tenant with the 10 Day Notice by posting it on his door. The 10 Day Notice was submitted into evidence and states that the Tenant did not pay \$1,400.00 that was due on November 1, 2018. The effective end of tenancy date of the 10 Day Notice is stated as November 15, 2018. The 10 Day Notice states the Tenant's address as the upstairs unit of the home.

The Landlord has also applied for monetary compensation in the amount of \$2,800.00, which is \$1,400.00 per month for November and December 2018. They stated that they received partial payments of \$1,000.00 for both of these months.

The Landlord initially applied for \$2,400.00 for December 2018 but stated that since their application was filed the Tenant made a payment of \$1,000.00 towards December rent owing, leaving an amount of \$1,400.00 owing for December 2018.

Analysis

Section 46(4) of the *Act* states that a tenant has 5 days in which to dispute a 10 Day Notice or pay the rent owing. As the Landlord posted the 10 Day Notice on the Tenant's door, the deeming provisions of Section 90 of the *Act* state that a document served through this method is deemed served 3 days after posting.

As such, I find that the Tenant is deemed to have received the 10 Day Notice on November 7, 2018 and he applied to dispute the notice on November 9, 2018, within the timeframe provided by the *Act*. Therefore, the issue before me is whether there was valid reason to serve the Tenant with a 10 Day Notice.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The 10 Day Notice stated that the Tenant owes \$1,400.00 of rent for November 2018. However, the parties were not in agreement as to the monthly rent amount owing. They did agree that the tenancy agreement signed on April 28, 2018 was signed for the primary purpose of financing for the Landlord. The Landlord testified that \$2,400.00 was the rent for the whole home.

The 10 Day Notice served to the Tenant states the Tenant's address as the upstairs of the home, although the 10 Day Notice also states that the Tenant owes \$2,400.00 in monthly rent. The parties were in agreement that the upstairs of the home was rented through a verbal agreement for \$1,000.00 per month, so the information provided on the 10 Day Notice conflicts with the testimony provided. If the parties agreed that the Tenant lives in the upstairs unit, as stated on the 10 Day Notice, then the Tenant does not owe rent in the amount of \$2,400.00. The parties agreed that rent for the upstairs unit is \$1,000.00, the amount that the Tenant paid for November and December 2018.

The Landlord stated that the tenancy agreement signed in April 2018 was to set the rent amount of \$2,400.00 should the Tenant rent the entire home. However, the Tenant was not able to rent the entire home in May 2018 if a renovation was being completed in the downstairs unit. I also find insufficient evidence before me to establish that the Tenant agreed to rent the entire home, which would have been done through both parties agreeing to enter into a new tenancy agreement for the entire home.

As there were questions raised about the intent of the tenancy agreement signed in April 2018, and conflicting testimony from the parties, I do not find this tenancy agreement to be reliable evidence. Instead, it seems that the initial verbal tenancy agreement was still in place at the time. The Tenant continued to reside in the upstairs rental unit during the time the renovations were being completed in the downstairs unit and continued to pay \$1,000.00 per month, regardless of whether reductions were provided during this time for work completed in the home.

Section 26 of the *Act* states that rent must be paid when it is due as per the tenancy agreement. As I have found that the verbal tenancy agreement remained in place for the rental of the upstairs unit, I find that the Tenant was responsible for a monthly rent in

the amount of \$1,000.00. The Tenant paid \$1,000.00 for November and December 2018 and therefore there was no rent outstanding when the 10 Day Notice was served to the Tenant.

As such, I find that the 10 Day Notice dated November 4, 2018 is not valid and is therefore cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I am also not satisfied that the Landlord is owed \$2,800.00 in unpaid rent. The onus in this case is on the party making the claim, and therefore it was the responsibility of the Landlord to submit sufficient testimony and evidence to establish that the rent is \$2,400.00 per month and that the Tenant has underpaid for November and December 2018 in an amount of \$2,800.00.

When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

Due to the conflicting testimony regarding the signed tenancy agreement and the status of the two rental units in the home, I do not find that the Landlord met the burden of proof in this matter for me to be satisfied that the parties entered into an agreement to rent the whole home in an amount of \$2,400.00 per month. Accordingly, I am not satisfied that \$2,800.00 in rent remains outstanding.

Therefore, I decline to award any compensation to the Landlord. Their application is dismissed, without leave to reapply.

As the Tenant was successful in his application to cancel the 10 Day Notice, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Tenant may deduct \$100.00 from his next monthly rent payment as satisfaction of this amount.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

The 10 Day Notice dated November 4, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment as recovery of the filing fee paid for the application.

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: December 24, 2018

Residential Tenancy Branch