



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing more time to make an application to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 46.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to more time?

Is the notice to end tenancy valid?

Background and Evidence

The following are undisputed facts: The tenancy first started in November 2017 with two tenants. A third tenant moved in and on August 1, 2018 the Parties entered into a tenancy agreement with rent of \$1,300.00 payable on the first day of each month. On March 2, 2019 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Notice indicates that \$1,300.00 was not paid for March 2019 rent and that \$1,210.12 is owed for utilities. The Tenants disputed the Notice by making an application on March 14, 2019.

The Tenant states that it was unable to make the application within the time allowed as a granddaughter was murdered and the Tenant was suffering from grief. The Landlord states that it was not informed of this.

The Landlord's Agent (the "Agent") states that the Tenant did not pay March 2019 rent when it was due. The Agent states that the Tenants paid the outstanding rent on March 29, 2019 and that the Tenants were given a receipt indicating that the rent was collected "for use and occupancy only".

The Tenant MAH (the "Tenant") states that they receive their income just before the end of each month and that they pay their rent to the Landlord at that time for the next month. The Tenants states that they pay rent in cash and that the Landlord sometimes does not give them a receipt. The Tenant provides copies of rental receipts. The Tenant states that they always have paid their rents in advance.

The Agent agrees that sometimes receipts are not issued and states that the Landlord sometimes does not do things properly. The Agent states that this is why the Agent became involved in helping the Landlord. The Agent states that the Landlord has not maintained any financial records for the tenancy and that for this reason they do not have evidence of rent payments other than from the receipts provided by the Tenants as evidence for this hearing. The Agent notes that some of the receipts indicate that monies were taken for the same month that the money was collected.

The Agent states that no demand letter was given to the Tenants in relation to the utilities set out on the Notice.

Analysis

Section 46 of the Act provides that a tenant has 5 days from receipt of a notice to end tenancy for unpaid rent to make an application to dispute that notice. Section 66(1) of

the Act provides that a time limit may be extended only in exceptional circumstances. Given the Tenant's evidence of her granddaughter's death, I find that exceptional circumstances allow me to extend the time limit.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Where a notice to end tenancy is disputed by a tenant the landlord carries the burden of proof to substantiate that the notice to end tenancy is valid. The Tenants have provided evidence of receipts indicating rent payments made near the end of the month with some receipts that do not indicate the month the rent was collected for. I also find the Tenant's oral evidence of rent payments made for the next month to hold a ring of truth. Given the Landlord's lack of financial records for the collection of rents and considering the Landlord's evidence of not doing things properly, I consider that although some receipts indicate collection for the month received, this may very well have been an error. For these reasons, I find that the Landlord has not provided sufficient evidence on a balance of probabilities that the Tenants have failed to pay March 2019 rent. Further based on undisputed evidence of a full rent payment received on March 29, 2019 I find that the Tenants have paid April 2019 rent as well.

Section 46(6) of the Act provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a 10 day notice to end tenancy. Given the undisputed evidence that no written demand for utility payments was given to the Tenants I find that the Landlord was not able to end the tenancy for unpaid utilities with the Notice.

For the above reasons I find that the Notice is not valid and that the Tenants are entitled to its cancellation. The tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

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: April 15, 2019

Residential Tenancy Branch