



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Both tenants attended the hearing accompanied by an Advocate who gave affirmed testimony, and another Advocate assisting. However, the line remained open while the telephone system was monitored for in excess of 15 minutes prior to hearing any testimony and no one for the landlord joined the call. One of the tenants advised that the landlord was served with the tenants' application and notice of this hearing (the Hearing Package) by personally handing it to the landlord's grandmother on March 25, 2019. The landlord resides with her grandmother, and the landlord's grandmother has acted as agent on behalf of the landlord, and the grandmother has dealt with the tenancy by talking to the tenants about tenancy matters including completing the Shelter form in order for rent to be paid by a government Ministry.

The *Residential Tenancy Act* permits serving a Hearing Package to an agent of the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

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

Background and Evidence

The tenants' Advocate testified that this tenancy began in January, 2018 and the tenants still reside in the rental unit. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month as well as utilities amounting to \$150.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level of the home. There is no written tenancy agreement.

The tenants' Advocate also testified that on March 19, 2019 the landlord personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the first page only has been provided as evidence for this hearing. It is dated March 19, 2019 and contains an effective date of vacancy of March 30, 2019 for unpaid rent in the amount of \$1,150.00 that was due on March 1, 2019. The tenants' Advocate believes that the amount includes utilities.

Rent is paid directly to the landlord from a government Ministry, and a previous person advocating for the tenants arranged that, and the tenants' Advocate is in contact with the Ministry to ensure that rent payments are made on time. The tenants' Advocate contacted the Ministry to track the cheques issued to the landlord, and confirmed that all payments have been received by the landlord on time, and all have been cashed by the landlord. The tenants' Advocate contacted the landlord by telephone, leaving a message to that effect, but has not heard back from the landlord.

The landlord attempted to evict the tenants in December, 2018 by writing a note to the tenants, not in a Residential Tenancy Branch form. The tenants' Advocate talked to the landlord and indicated that he would try to find another place for the tenants to move to, but the landlord gave the tenants the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities instead.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In the absence of the landlord, and in the absence of any evidence from the landlord, I am not satisfied that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Act*. I am also not satisfied that the tenants failed to pay rent, and I cancel the Notice.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 19, 2019 is hereby 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 *Residential Tenancy Act*.

Dated: April 29, 2019

Residential Tenancy Branch