



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nav Sunset
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- recovery of the filing fee.

The tenants and the landlord's agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice and recovery of the filing fee?

Background and Evidence

The tenants submitted a written tenancy agreement showing a tenancy start date of October 11, 2008, monthly rent of \$933, due on the 1st day of the month, and a security deposit of \$466.50 being paid by the tenants to the landlord.

The current monthly rent is \$1,085.

The evidence shows that the landlord here was not the original landlord, rather the landlord here bought the building and took ownership in December 2015.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules provides that the landlord has the burden of proving the merits of the Notice.

The Notice, which is the subject of this application, was dated September 8, 2020, for an effective move out date of September 21, 2020. The agent confirmed that the building manager served the Notice to the tenants by attaching it to the tenants' door on September 8, 2020. The tenants' application was made on September 11, 2020.

The Notice, filed into evidence, indicated the tenants failed to pay the monthly rent that was due on September 1, 2020.

In response to my inquiry, the agent said the tenants did not owe the monthly rent for September 2020, rather the unpaid rent listed on the Notice was rent due for March 2020.

Tenants' response –

The tenants said that the monthly rent was paid in March 2020, and referred to their documentary evidence which showed the monthly rent cheque cleared their account on March 4, 2020.

Landlord's rebuttal –

The landlord said that there is no record of the payment being made.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by section 33 of the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In this case, the Notice said the tenants failed to pay the monthly rent due on September 1, 2020, but, when questioned, the agent said the monthly rent due for September was paid.

As the tenants, by the landlord's own evidence, did not owe rent for September 2020, I find the notice invalid, not supported by the landlord's own evidence, and therefore, it must be cancelled.

I therefore **order** that the 10 Day Notice, dated September 11, 2020, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

As I have cancelled the Notice, I grant the tenants recovery of their filing fee of \$100.

The tenants are authorized to deduct \$100 from a future monthly rent payment, and are to notify the landlord when this deduction is being made, so that the landlord will not serve the tenants a 10 Day Notice for rent deficiency.

The parties are encouraged to communicate with each other and show any proof in their possession about the issue of the rent payment for March 2020.

Conclusion

The tenants' application has been granted as I have ordered that the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 11, 2020 be cancelled and that the tenancy continue until ended in accordance with the Act.

The tenants are granted recovery of their filing fee of \$100 and are authorized to deduct \$100 from a future month's rent payment in satisfaction.

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: November 5, 2020

Residential Tenancy Branch