



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 11957961 Canada LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord make repairs to the rental unit or property; and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I advised the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related. In this case, the primary application is for an order cancelling a notice to end the tenancy and I alerted the parties that the balance of the tenants' application will not be heard or decided upon in this hearing.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided relevant to the tenants' application for an order cancelling a notice to end the tenancy has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$600.00 is payable on the 1st day of each month. No security deposit or pet damage deposit was collected by the landlord. The rental unit is an apartment in a complex containing about 16 units currently. A copy of the tenancy agreement has been provided for this hearing which specifies that the *Residential Tenancy Act* does not apply because it's a not-for-profit housing cooperative, but the landlord testified there was no co-operative at the commencement of this tenancy, and therefore, that statement does not apply.

The landlord's agent further testified that on May 9, 2021 the landlord served each of the tenants with a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally. A copy has been provided for this hearing and it is dated May 9, 2021 and contains an effective date of vacancy of May 20, 2021 for unpaid rent in the amount of \$600.00 that was due on February 1, 2021. The tenants are currently in arrears of rent the sum of \$3,600.00 for November, 2020 to July, 2021. The landlord's agent believes the tenants may have paid a previous landlord rent in September and October, 2020. The landlord company purchased the rental unit in January, 2021.

During cross-examination, the landlord testified that the tenants talked to the landlord's son in July and moved into the rental unit in September, 2020, but the landlord wasn't there on July 1, 2020; it's possible that his son opened the apartment on July 1, 2020 and gave the tenants the keys.

The first tenant (STH) testified that the tenants stopped paying rent in April, 2021 due to a high electric bill. The tenants offered a payment plan with the landlord's agent, but he refused and claimed more than what was owed.

The tenant further testified that she paid \$600.00 to the previous landlord in January, 2021. On July 1, 2020 the tenants gave an e-transfer to the landlord's son for \$900.00, and the rest was in cash, which covered a \$300.00 security deposit and a \$300.00 pet damage deposit. After that, the previous landlords gave the tenants a letter stating that the tenants entered into a tenancy agreement with a landlord who was not the landlord.

The tenant agrees that rent for April to July, 2021 is outstanding, for a total of \$2,400.00. Rent is usually paid by e-transfer and occasionally in cash, but no receipts are provided. The landlord's claim is only for January, 2021 rent so the only proof provided is an e-transfer for that month.

The second tenant (JW) testified that 2 e-transfers were made in June and July, 2020 for \$600.00 each. A copy of an e-transfer dated January 20, 2021 in the amount of \$600.00 has been provided, transferring the money to the previous landlord. The tenant testified that some of the rent was paid to the previous landlord and some to the landlord's agent's son. The tenants only owe April to July, 2021.

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 this case, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated May 9, 2021 for unpaid rent in the amount of \$600.00 that was due on February 1, 2021. The landlord testified that the tenants have not paid rent for November, 2020 through July, 2021. He also testified that he purchased the complex in January, 2021.

The landlord has not provided any evidentiary material, and the tenants have provided evidence of having paid \$600.00 in rent to the previous landlord in January, 2021.

I have no idea why the landlord is not certain when the tenants actually moved into the rental unit, whether or not his son collected rent, or if or why another or a previous landlord would be collecting rent. There is no evidence before me that the tenants didn't pay rent for any months, other than the tenants' testimony that they owe rent for April through July, 2021. There is no evidence that the tenants didn't pay rent that was due on February 1, 2021, and I find that the landlord has failed to establish what was paid. Certainly if rent was outstanding from November, 2020 to July, 2021 and the Notice was issued in May, 2021, there would be more arrears mentioned in the Notice than \$600.00 that was due on February 1, 2021.

The tenants admit that some rent has not been paid, and the landlord is at liberty to serve another Notice if rent remains unpaid. However, the application before me is to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 9, 2021, and I so order.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 9, 2021 is hereby cancelled and the tenancy continues.

The balance of the tenants' application is hereby dismissed with leave to reapply.

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: July 22, 2021

Residential Tenancy Branch