



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

On April 15, 2021, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 9, 2021.

The matter was set for a conference call hearing. The Tenant and Landlord's agent ("the Landlord") attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord and Tenant testified that the tenancy has ended. The Tenants vacated the rental unit on June 20, 2021.

Since the tenancy has ended on June 30, 2021, there is no need to determine whether the tenancy is ending due to unpaid rent. The Landlord does not require an order of possession for the rental unit.

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 9, 2021 is dismissed.

Section 55 (1.1) of the Act provides: If an application is in relation to a landlord's notice to end a tenancy under section 46 for nonpayment of rent, and the director dismisses the tenant's application or upholds the landlord's notice and the notice complies with requirements under section 52 regarding form and content the director must grant an order requiring the payment of the unpaid rent.

The Landlord stated that she would like a monetary order for the unpaid rent.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties testified that the tenancy began on September 15, 2020. Rent in the amount of \$1,850.00 is due to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that when the tenancy was entered into, the Tenants' agreed to pay \$925.00 for the last two weeks of September 2020. The Tenants also agreed to pay \$368.00 for propane that was provided to them and agreed to pay a security deposit of \$925.00.

The Landlord stated that the Tenants' performed labour for the Landlord and the amount of \$1,420.00 was deducted from the amounts owing to the Landlord. The Landlord stated that a balance of \$798.00 was left owing to the Landlord.

The Landlord provided copies of receipts indicating the Landlord received \$400.00 from the Tenants' on April 1, 2021. The Landlord takes the position that the remaining amount owing to the Landlord is for unpaid rent and not towards a security deposit.

The Landlord's agent was asked to explain which amounts of the labour performed by the Tenants was applied to propane, rent and security deposit.

The Landlord's agent stated that it was not recorded clearly how compensation for the labour performed was applied to the amounts owed by the Tenants. The Landlord

reissued receipts to the tenants taking the position that the labour was applied to propane and the security deposit.

The Landlord's agent stated that if the amount owing by the Tenants' is found to not be rent, then they will not have to deal with returning or claiming against the full amount of the security deposit which they are ok with.

In reply, the Tenant stated that they were given two receipts in April 2021. The Tenant also stated that they received two different eviction notices, with the first notice indicating that the amount owing is for an unpaid security deposit. The Tenant stated that the Landlord is now claiming it was for unpaid rent.

The Tenant pointed out that the Landlord's agent was not involved in these tenancy matters and does not have first-hand involvement.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities I make the following findings:

I find that the tenancy ended on June 30, 2021. Since the tenancy has ended, there is no need to determine whether the tenancy is ending due to unpaid rent. The Landlord does not require an order of possession for the rental unit.

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 9, 2021 is dismissed.

I find that the Landlord did not provide sufficient evidence to prove that the Tenants owe \$373.00 in unpaid rent. I find that it is more likely than not that the amount owing was for an unpaid security deposit. The Landlord's request for a monetary order for unpaid rent pursuant to section 55 (1.1) of the Act is dismissed.

Conclusion

The Landlord and Tenant testified that the tenancy has ended. The Tenants vacated the rental unit on June 20, 2021.

Since the tenancy has ended on June 30, 2021, there is no need to determine whether the tenancy is ending due to unpaid rent. The Landlord does not require an order of possession for the rental unit.

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 9, 2021 is dismissed.

The Landlord's request for a monetary order for unpaid November 2020 rent was not successful and is dismissed.

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 07, 2021

Residential Tenancy Branch