



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, OLC**

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenants' January 23 and February 9, 2023 applications to cancel 10-Day Notices for Unpaid Rent and Utilities (Notice).

Issues to be Decided

1. Did the Tenants fail to pay rent when due?
2. Did the Tenants fail to pay utilities after receiving written demand from the Landlord?

Background and Evidence

The tenancy commenced on March 1, 2016 for a fixed term of one year, to continue on a month-to-month basis after the fixed term expired. The Tenants continue to reside in the rental property. The monthly rent is \$990 and the Tenants had previously paid a security deposit in the amount of \$495.

The Landlord issued three Notices to the Tenants on:

1. January 15, 2023 – unpaid rent of \$495 for March 1, 2017;
2. February 5, 2023 – unpaid utilities of \$333.32; and
3. February 13, 2023 – unpaid rent of \$495 for April 1, 2017.

The Tenants applied in time for dispute resolution to cancel each Notice.

Utilities

The Landlord testified that he provided 30 days' written demand to the Tenants on January 5, 2023 for the unpaid utilities prior to issuing the Notice on February 5, 2023. The Landlord did not provide a copy of the written notice. The Tenant K. G. stated that he received a demand for money from the Landlord approximately three months after the Notice was issued, but that he did not know its purpose. The Tenant further testified that he and the Landlord did come to an agreement about the allocation of utilities between the upstairs and basement suites, and that the Landlord had since been paid in full.

Unpaid rent

Both parties testified that approximately a year into the tenancy, the Tenants were unable to pay full rent and the Landlord agreed to apply the Tenants' security deposit toward the rent.

The Landlord testified that the Notices for Unpaid Rent for March and April 2017, concerned the months he and the Tenants had agreed to apply the security deposit toward rent. The Landlord stated during the hearing that he sought the return of the security deposit using these Notices.

The Tenant K.G. testified that he and the Landlord agreed to apply the security deposit and that rent had been fully paid for March and April 2017. The Landlord provided no evidence to the contrary.

Analysis

1. Notice for Unpaid Utilities

Section 46(6) of the Act requires a landlord to make written demand on a tenant and allow at least 30 days for payment before the landlord may treat the unpaid utilities as unpaid rent.

The Landlord testified that he provided 30 days' written demand to the Tenants on January 5, 2023 for the unpaid utilities prior to issuing the Notice on February 5, 2023.

The Landlord did not provide a copy of the written notice as evidence during the hearing. The Landlord bears the onus of establishing that the 30-days' written notice was provided.

Based upon the lack of evidence of the written notice for unpaid utilities, the Tenants' application to cancel this Notice is granted.

2. Notices for Unpaid Rent

The Landlord testified that the Notices for unpaid rent for March 1, 2017 and April 1, 2017, were for those months where he had agreed to apply the security deposit toward rent. I find that the Tenants have paid in full the rent for March and April 2017.

Section 20 of the Act provides that a security deposit may not be required at any time other than at the time the tenancy agreement is entered into. In this case, the Landlord may not now request a security deposit from the Tenants by characterizing it is unpaid rent. It is noted that the issue regarding the recoupment of the security deposit was subject to a prior dispute resolution hearing in January 2023 on the Tenants' application to cancel a One Month Notice to End Tenancy for Cause on these same facts. The Arbitrator determined then that the Landlord could only require payment of the security deposit at the time of the lease, and the evidence established that the Tenants had done so. The Arbitrator therefore cancelled the Notice.

After consideration of the evidence and testimony, I find the Landlord has not established a basis for any of the three Notices. Accordingly, the Notices are cancelled immediately. The tenancy shall continue until terminated in accordance with the Act.

Conclusion

The Tenants' applications are granted.

The 10-Day Notice to End Tenancy for Unpaid Utilities served February 5, 2023 is cancelled effective immediately.

The 10-Day Notice to End Tenancy for Unpaid Rent for March 1 and April 1, 2017, served January 15 and February 13, 2023, respectively, are cancelled effective immediately.

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: May 29, 2023

Residential Tenancy Branch