



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, RR, FF

Introduction

This matter proceeded by way of a conference call Hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the Tenants to cancel a 10 Day Notice to End Tenancy for unpaid rent, and a request for a monetary Order and rent reduction for issues related to cable and cleaning. The Landlords did not file a cross Application for Dispute Resolution but attended the hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. The Landlords were assisted by a representative who also provided translation for them.

Preliminary Issue(s):

The Tenants indicated several matters of dispute on their Application; however there are only two main issues that are appropriate to deal with during this proceeding; the 10 Day Notice to End Tenancy and the date that the rent is due. The Tenants' other issues in dispute are not sufficiently related to the main issue to be dealt with together.

Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Tenants unrelated disputes set out on the Application with liberty to reapply.

Issue(s) to be Decided

What date is the rent due each month under this tenancy agreement?

Is the Notice to End Tenancy in effect and do the Tenants need to vacate the unit as a result?

Background and Evidence

I have reviewed the relevant 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.

The Tenants submitted a copy of a 10 Day Notice to End Tenancy in evidence which they confirmed was received on their door from the Landlords on September 26, 2011. The Tenants filed their Application for Dispute Resolution on September 28, 2011. The Tenants have not vacated the rental unit and the rent was paid on October 01, 2011. The Tenants and Landlords have no written tenancy agreement. The parties agree that rent is \$850.00 and that it is due once a month.

The Tenants dispute the date the rent is due. The Tenants' position is that the rent should be due on the 1st of the month. The Tenants testified that they agreed to take possession of the rental unit on April 22, 2011 rather than on a different day of the month. The Tenants testified that they paid the rent on April 22, 2011, received the keys, and moved some boxes in on that date.

The Landlords testified that the verbal tenancy agreement was for the 22nd of each month as that was the date the tenancy commenced. The Landlords state that on several occasions during this tenancy they have been patient with the Tenants for one or two days beyond the 22nd but have then had to go ask them for the rent. The Landlords testified there was no pattern of the Tenants paying rent on the first of the month. The Landlords testified that when the Tenants were late with rent in September, the Landlords finally issued a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlords stated that they received the unpaid rent from the Tenants on October 01, 2011.

Tenant SSG testified that she would pay the rent each month after the Landlords came to them requesting it. Tenant JSG stated that he is busy running his own business and is not always aware of what date it is. The Tenants stated that they paid rent on varying days of the month, rather than on the first of the month.

Analysis

The Act does not establish the 1st of the month as the date rent is due, rather it allows that rent be due on the date established by the tenancy agreement between a landlord and tenant. The definition of "*tenancy agreement*" in the Act means "*an agreement,*

whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.” Section 12 of the Act confirms that the “*standard terms*” as set out in the Residential Tenancy Regulation (the “Regulation”) apply to tenancy agreements, including those that are not in writing. After hearing evidence from both the Landlords and the Tenants, on the balance of probabilities I find that that the rent is due on the 22nd of each month. The Tenants did not establish that the Landlords had agreed to any other date and the 22nd of each month is consistent with the date that the Tenants took possession of the rental unit.

The Tenants confirmed the date of service of the 10 Day Notice to End Tenancy was September 26, 2011. The Tenants paid rent on October 01, 2011. The Tenants paid rent within 5 days, as allowed by the Notice, thus I grant the Tenants’ request to cancel the Notice.

The Tenants and the Landlords may have a separate dispute, however there were several occasions during the Hearing where I had to caution the Tenants and Landlords to only give me information relevant to the 10 Day Notice to End Tenancy and the date rent was due. I also cautioned the Tenants that the Act, in particular section 26(2), and the Regulation, section 5 of the Schedule, specifically prohibit a tenant from withholding rent in most circumstances.

Pursuant to 17.1 of the Rules of Procedure, and as the Tenants were only partially successful in this Application, I decline to award recovery of their filing fee.

Conclusion

I have granted the Tenants’ request to cancel this Notice to End Tenancy.

I dismiss the Tenants other issues relating to cable, cleaning, and a request for a monetary Order and/or rent reduction, with liberty to reapply for Dispute Resolution.

I dismiss the Tenants request for recovery of the filing fee from the Landlords in relation to the Application before me.

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: October 17, 2011.

Residential Tenancy Branch