



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DIVERSIFIED PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNL, FF

Introduction

The tenant applied for several remedies under a single application, including requests to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties appeared or were represented at the hearing 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 tenant served both the owners and the current property manager with his hearing documents. The landlords did not serve any evidence in support of their position.

Included in the tenant's evidence package was another 10 Day Notice to End Tenancy that was served after the tenant filed the amended application. Both parties confirmed that they were prepared to deal with the most recent 10 Day Notice during this hearing. I have amended the application to reflect the tenant's dispute of two 10 Day Notices to End Tenancy: one dated February 5, 2014 and the other dated March 7, 2014.

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The tenant indicated several matters of dispute on the Application for Dispute Resolution, but confirmed during the hearing that the most important were his requests to cancel the Notices to End Tenancy. I find that not all the issues identified on this Application for Dispute Resolution are sufficiently related to the issuance of the Notices to End Tenancy. Therefore, I have only considered matters necessary to determine whether the Notices to End Tenancy should be upheld or cancelled and I have dismissed the balance of tenant's application with leave to reapply.

Issue(s) to be Decided

1. Identity of tenant(s).
2. Amount of rent payable by tenant.
3. Should the Notices to End Tenancy be upheld or cancelled?

Background and Evidence

The tenant and two other persons executed a written tenancy agreement prepared by the former property manager on April 12, 1999. On that tenancy agreement, the tenant's name appears in the space provided for the name of adult occupants, other than a tenant, who would be permitted to occupy the rental unit; however, the tenant signed the last page of the agreement as a tenant. The former property manager also issued a number of Notices of Rent Increase and named all three occupants as tenants, without any objection.

Despite the inconsistency on the tenancy agreement the tenant testified that he has always considered himself a tenant. The current property manager suggested that the original tenancy agreement identified the tenant as an occupant on page 1 in error given the limited space on the form to name all three tenants. The tenant did not object to this suggestion.

The tenant continues to reside at the property although the two other tenants have since moved out of the rental unit. The tenant testified that another person moved into the rental unit approximately seven years ago in place of one of the original tenants. The tenant questioned whether that person should be recognized as a tenant.

The property manager took the position that the tenant is the only "surviving" tenant of the original tenancy agreement and that there is no written documentation indicating the current occupant became a tenant. The tenant confirmed that he knew of no other tenancy agreement that he signed to reflect a change to the identity of the tenants. The tenant acknowledged that the occupant pays rent to him and that the tenant pays all of the rent to the landlord.

The tenancy agreement entered into in 1999 indicates the monthly rent is \$1,000.00 payable on the 1st day of every month and that the tenants are responsible for their own utilities. The tenant presented three Notices of Rent Increase issued by the former property manager indicating a rent increase as follows:

Starting May 1, 2007 rent would increase from \$1,150.00 to \$1,195.00
Starting May 1, 2008 rent would increase from \$1,195.00 to \$1,239.00
Starting May 1, 2009 rent would increase from \$1,239.00 to \$1,284.00

The tenant submitted a copy of another tenancy agreement presented to him by the owner of the property in 2012 after another one of the original tenants left the property; however, it does not provide the names of the tenant(s) on page 1 of the agreement and there is no signature of a tenant on the signature page of the agreement. This document indicates that rent would be \$1,300.00 starting July 1, 2012.

With respect to the 10 Day Notice to End Tenancy issued by the owner's lawyer on February 5, 2014, the tenant disputed this Notice on the basis the amounts appearing on the Notice were incorrect since the Notice indicates rent of \$1,415.00 was outstanding and \$1,415.00 in utilities outstanding. Rent of \$1,375.00 was paid on the fifth day after receiving the Notice. The tenant stated that the difference of \$40.00 relates to a deduction of \$40.00 he made in the month of October 2013, as reimbursement for his purchase of paint for the property, with the consent of the property owner. The property manager indicated he did not wish to pursue eviction based upon this Notice.

The property manager issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 7, 2014 indicating \$1,300.00 in rent was outstanding. It was undisputed that the tenant subsequently paid \$683.00 toward March 2014 rent. The tenant pointed out that the amount of rent indicated on this Notice is also incorrect. The property manager explained that he only recently took over management of the property and that he was advised, either by the owner or the owner's lawyer, that the monthly rent for this property is \$1,300.00 per month. The property manager was prepared to recognize a monthly rent obligation of \$1,300.00 based on what he was told and give a \$150.00 credit to the tenant for overpayment of rent for the month of January and February 2014. However, the tenant submitted that not only has he paid \$1,375.00 for January and February 2014; the tenant has, over the past few years, been paying rent of \$1,325.00 and \$1,350.00 per month.

The property manager acknowledged that the last Notice of Rent Increase in his possession reflects a monthly rent of \$1,284.00 but suggested subsequent Notices of Rent Increase may exist. The tenant conceded that other Notices of Rent Increase may have been served upon one of the former tenant who moved out in 2012. The tenant submitted that the only other Notice of Rent Increase he has that was not provided in his evidence package is the one increasing the rent to \$1,375.00 effective January 1, 2014.

On February 13, 2014 the property manager issued a 2 Month Notice to End Tenancy for Landlord's Use of Property based upon the instructions of the owners. The 2 Month Notice has a stated effective date of April 30, 2014 and indicates the reason for ending

the tenancy is that “*The rental unit will be occupied by the landlord or the landlord’s spouse or close family member (father, mother or child) of the landlord or the landlord’s spouse.*”

The property manager submitted that the owners have advised him that they need vacant possession of the rental unit in order to improve the condition of the property, move into the property, and sell the property.

The tenant submitted that the property had been listed for sale and that the tenant has been requesting repairs of the landlord that have not been sufficiently addressed by the landlord. Then, after he filed this application on February 7, 2014, in which he made a request for repair orders and compensation, he was served with the 2 Month Notice. The tenant questioned the owner’s good faith intention to fulfill the reason indicated on the 2 Month Notice especially when their intent is to sell the property.

Analysis

Upon consideration of all of the evidence presented to me, I provide the following findings and reasons.

Identity of tenant(s)

With respect to the tenancy agreement entered into in 1999 I accept, on the preponderance of the evidence, that all parties intended for the tenant to be identified and have rights and obligations of a tenant. That evidence includes the tenant’s signature on in the space provided for a tenant’s signature on the last page of the tenancy agreement; issuance of several Notices of Rent Increase identifying the tenant as one of the three co-tenants; and, the tenant’s undisputed testimony.

I find the tenancy agreement entered into in May 1999 is still in effect since it was not effectively replaced by the document created in 2012. The tenancy agreement prepared by the landlord in 2012 is not binding or of any effect since it does not identify any tenant and was not executed by a tenant.

I find there is insufficient evidence to indicate the person currently residing with the tenant entered into a tenancy agreement with the landlord, or that the original tenancy agreement was amended with the agreement of all parties to reflect the inclusion of the current occupant as a tenant. Therefore, I make no finding that the occupant is a tenant.

It is important for the tenant to understand that an occupant does not have rights and obligations with the landlord under the Act and any tenancy related matters should be communicated to or by the tenant. Further, the only person with an obligation to pay rent to the landlord is the tenant.

Amount of Rent and 10 Day Notice

Since the tenancy agreement entered into in 1999 is still in effect, the monthly rent is that established by the tenancy agreement, subject only to legal rent increases by way of Notices of Rent Increase.

I note the last Notice of Rent Increase provided to me indicates the monthly rent is \$1,284.00; yet, both parties indicated it is possible the rent was legally increased after that Notice of Rent Increase. I also find it uncertain as to whether the rent was set at \$1,300.00 per month based upon a valid Notice of Rent Increase or if the landlord was relying upon the unsigned tenancy agreement to set the rent at that amount.

With respect to the 10 Day Notice issued on March 7, 2014, I find the inconsistent and incomplete information indicates more investigation is required in order to determine the amount of the monthly rent payable by the tenant. Even if the rent is \$1,300.00 per month, as submitted by the property manager, and the tenant has paid more than that over the past few years, as submitted by the tenant, it is entirely possible the tenant has overpaid rent in the past and was entitled to withhold the overpayment from the rent payment for March 2014. Since I am uncertain as to the amount of monthly rent payable by the tenant, and the landlord bears the burden of proof, I cancel the 10 Day Notice issued on March 7, 2014.

In light of the above, I find it necessary and appropriate to issue the following orders upon the parties:

1. I order the landlord to determine the amount of the monthly rent by the tenant, as increased in a manner that complies with the Act, and the amount of rent paid by the tenant.
2. I also order the tenant to cooperate with the landlord's efforts to establish these amounts: including making available to the landlord, upon request, any tenancy related documents the tenant has in his possession or easily obtainable by the tenant to reflect the length of this tenancy and the potential difficulty in locating documents several years old.

3. Once the landlord has determined the amount of rent payable by the tenant and the tenant's actual payments, and any over or under payment, I order the landlord to notify the tenant of such in writing.
4. Upon receipt of the written notification described above, the tenant is to review it in a timely manner and indicate to the landlord whether he agrees or disagrees with the landlord's calculations, in writing.

If the parties are in agreement as to the amount of monthly rent and any rent over/under payment, the over/under payment may be recovered in accordance with the Act. For an under payment of rent, the landlord may demand payment from the tenant and issue a 10 Day Notice if the tenant does not pay the amount. If there has been an overpayment of rent the tenant may withhold rent until such time the overpayment is recovered.

Should the parties remain in dispute with respect to the amount of monthly rent and any over/under payment of rent the parties are at liberty to file an Application for Dispute Resolution to seek further remedy.

2 Month Notice to End Tenancy

Where a landlord issues a 2 Month Notice to End Tenancy indicating the landlord or landlord's close family member intends, in good faith, to occupy the rental unit the landlord has a two part test to satisfy. To end the tenancy for this reason, the landlord must prove that the owner of the property (or close family member of the owner not only intends to occupy the rental unit but that they are doing so in good faith, in the absence of any ulterior motive.

Residential Tenancy Policy Guideline 2: *Good Faith Requirement when Ending a Tenancy* provides information with respect to ending a tenancy for landlord's use and the good faith requirement. The policy guideline provides, in part:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

In the absence of testimony from the owner's, any evidence suggesting the owners are preparing to occupy the rental unit for at least six months, and considering the owner's

instructed the property manager to issue the 2 Month Notice just after receiving the Tenant's Application for Dispute Resolution I find the landlord has not met the burden to prove the owners intend to use the rental unit for the stated purpose, in good faith. Therefore, I cancel the 2 Month Notice.

As I have cancelled all Notices to End Tenancy served upon the tenant the tenancy continues at this time.

I award the filing fee to the tenant and I authorize the tenant to recover this amount by deducting \$50.00 from a subsequent month's rent payable.

Conclusion

The Notices to End Tenancy have been cancelled and the tenancy continues. The filing fee has been awarded to the tenant and the tenant may deduct \$50.00 from a subsequent month's rent to recovery this award.

I have issued orders to both parties with respect to determining the amount of the rent payable by the tenant under the Act and any over/under payment of rent.

The remainder of the tenant's Application for Dispute Resolution has been 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: March 27, 2014

Residential Tenancy Branch

