



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant and an agent for the landlord attended the hearing, and the landlord's agent called one witness. The parties and the witness each gave affirmed testimony, and the parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The tenant advised that an additional page of evidence was provided to the Residential Tenancy Branch and to the landlord the day before the hearing by facsimile. The landlord's agent has received that evidence however, it was not available to me in time for the hearing. The landlord did not object to the inclusion of the evidence, which was received by me prior to writing this Decision.

The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this fixed term tenancy began in June, 2002 and the tenant still resides in the rental unit. The tenancy agreement is for a fixed term of one

year and is renewed annually for another one year fixed term. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month and is subsidized when the tenant qualifies. The tenant's portion is \$32.00 per month for each occupant age 19 years or older. The tenant has one child who turned 19 this year. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord.

The landlord's agent further testified that tenants must provide the landlord with documentation that outlines their income annually and when their income changes. If a tenant declares no income, then that tenant is generally required to prove it monthly by signing the Declaration of No Income and providing bank statements or some form of documentation. However, for a family of 2 adults who has one employed, the non-working person has to sign the Declaration of No Income annually because it isn't feasible to require it monthly.

The tenant has been advised verbally and by letter dated February 11, 2014 that the tenant is required to provide the necessary paperwork before the date rent is payable in order to qualify for the subsidy. A copy of the letter has been provided. It also states that since the tenant's child is 19 the child must also declare all income or provide a Declaration of No Income.

The tenant fell into arrears of rent, and the parties entered into an arrears agreement in writing, a copy of which has also been provided. It has been signed by the landlord's agent and the tenant, dated May 22, 2014 regarding the rent for the month of May, 2014. It states that the total arrears are \$909.00 and that the tenant will pay in installments of \$80.00 on the first day of each month commencing June 1, 2014 with the last payment of \$29.00 payable on May 1, 2015. The agreement also states that failure to pay rent on time or in full in the future violates the tenancy agreement and constitutes a breach sufficient to end the tenancy. It also states that the landlord reserves the right to issue a notice to end the tenancy if the agreement is broken or not held to. The landlord's agent testified that the tenant hadn't provided the required proof of income or Declaration of No Income for the month of May, 2014 and therefore did not qualify for the subsidy and the amount of rent payable was \$1,000.00; the tenant had only made a partial payment and the sum of \$909.00 remained outstanding at that time.

The tenant also failed to disclose income or no income for June, and the amount of rent payable was again \$1,000.00, due on June 1, 2014. The tenant paid the landlord \$230.00 on June 2, 2014, but has not paid any since.

The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided. The notice is dated June 4,

2014 and contains an effective date of vacancy of June 12, 2014. It states that the tenant failed to pay rent in the amount of \$1,679.00 that was due on June 1, 2014. The landlord's agent testified that the arrears from the Arrears Agreement are included in that amount.

During cross examination, the landlord's agent learned that the tenant had paid \$150.00 within the last 30 days and testified that the tenant was given a letter from the landlord indicating that any payments made would be accepted for use and occupancy only. As far as the landlord's agent is aware, no such letter was given for the \$150.00 paid within the last 30 days; a copy of the letter has not been provided.

The landlord's witness testified that the notice to end tenancy was placed on the tenant's door by the witness on June 4, 2014.

The witness also testified that she spoke with the tenant on the phone about the requirement of providing the information necessary to get the subsidy and advised the tenant that it was not the landlord's responsibility to continue to ask for it. The witness then followed up the conversation with the letter of February 11, 2014 and was sent by regular mail to the tenant.

The tenant testified that in the month of May, 2014 he declared \$450.00 income which was the requirement for June's rent. The tenant paid \$230.00 which covered the \$64.00 for rent and the balance was to be applied to the arrears. The tenant then paid \$150.00 in July, being \$64.00 for the rent and the balance to the arrears. The tenant agrees that for May he owed \$909.00 and after the payments he owes about \$609.00. The tenant declared an income in May for June's rent and the notice to end tenancy was issued June 4, 2014.

In rebuttal, the landlord's agent testified that the tenant gave proof of his income for himself and his daughter after June 1, 2014 and the landlord's agent told the tenant that if the notice to end tenancy is cancelled and the tenancy continues, the landlord would apply the subsidy retroactively.

Analysis

I have reviewed the notice to end tenancy and find that it is in the approved form and provides information required by the *Residential Tenancy Act*.

The landlord issued the notice to end tenancy because the tenant did not pay the rent in full by the first of June, 2014. There is no question that the tenant knows of the requirement to provide information before rent is due in order to get the subsidy. I accept that the tenant did not do so before June 1, 2014 and therefore did not qualify for the subsidy for June. The tenant already had arrears outstanding and had signed an agreement to re-pay those arrears but didn't pay rent until the \$150.00 payment. The only date I have of such a payment is that it occurred within the last 30 days.

I find that the landlord had cause to issue the notice on June 4, 2014 because the tenant had only paid a portion of the rent. However, where a tenant pays rent after the notice to end tenancy is issued, the landlord must make it clear each time a payment is made that the money is being accepted for use and occupancy of the rental unit only and does not serve to reinstate the tenancy. The landlord testified that such a letter was issued, but not for the \$150.00 payment made within the last 30 days. I refer to Residential Tenancy Branch Fact Sheet RTB 124, Reinstating Tenancies, which states, in part:

“A landlord and tenant can agree to reinstate the tenancy if the tenant pays all or some of the rent after the five-day period has passed but before the tenant is required to vacate. Such an agreement should be recorded in writing, and signed by both landlord and tenant. When a landlord does not want the tenancy to continue, the landlord should:

1. Clearly tell the tenant that the payment of rent outside the five-day period, or payment of some of the rent within the five-day period, does not cancel the Notice;
2. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and
3. Tell the tenant of one of the following options:
 - The tenant must vacate as required by the Notice to End Tenancy, or
 - The tenant must vacate at the end of the month.

“If a dispute arises, the landlord should be prepared to prove the payment was accepted for use and occupation only and not to reinstate the tenancy.”

I therefore find that the landlord has reinstated the tenancy. The notice to end tenancy is hereby cancelled and the tenancy continues.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled and the tenancy continues.

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 31, 2014