



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants and the landlord attended the conference call hearing, and each gave affirmed testimony. The parties also provided evidentiary material to each other and to the Residential Tenancy Branch prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

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

Issue(s) to be Decided

Have the tenants established that a notice to end tenancy for unpaid rent or utilities should be cancelled?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2012 and expires on September 30, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$1,800.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$800.00 although the tenancy agreement provides for a security deposit in the amount of \$900.00.

The landlord further testified that the tenant paid \$2,600.00 at the outset of the tenancy for rent and the security deposit, but the landlord was not concerned upon noticing that the security deposit amount was \$100.00 short.

The rent cheque for the month of January was returned by the tenant's financial institution for insufficient funds. The tenant re-paid the rent, but was \$150.00 short. The tenant has not paid rent for February, March or April, 2013, and the landlord applies for a monetary order in the amount of \$5,550.00.

The landlord served the tenant with a 10 Day Notice to End Tenancy by sliding a copy under the door of the rental unit and provided a copy for this hearing. The notice is dated March 13, 2013 and contains an expected date of vacancy of March 23, 2013, but the landlord does not know when the notice was served. Both pages of the 2-page form have been provided.

The landlord also testified that an application for dispute resolution was filed previously, however, the Decision, a copy of which was also provided for this hearing, states that the landlord failed to sign and date the notice and the landlord's application for an Order of Possession at that time was dismissed. The landlord asks for an Order of Possession.

The tenant testified that the landlord misled the tenants by entering into a fixed term tenancy agreement while the rental unit was in foreclosure. In mid-January, 2013 a realtor advised the tenants about the foreclosure action and told the tenants that a For Sale sign would be erected on the property. The tenant spoke to the landlord who denied foreclosure and told the tenant it was a mistake and that the landlord had mentioned that another lender would be assisting. The tenant contacted the lawyer who acted for the bank who confirmed that the landlord had been served with foreclosure documents. The landlord had lied to the tenant. The tenants have provided a copy of the Supreme Court foreclosure documents.

As a result of the foreclosure, the tenant had to suffer loss of quiet enjoyment of the rental unit due to home, water, septic and other inspections.

The tenant further testified that the landlord knew the tenants wanted a long-term tenancy and knew that the landlord couldn't keep that contract.

The tenants moved out of the rental unit at the end of March, 2013, however some items are still in the rental unit.

The tenant takes the position that under common law, the tenancy agreement is void due to the landlord's misrepresentation.

Analysis

In the circumstances, I disagree that the tenancy agreement is void as a result of misrepresentation. A tenant is required under the *Act* to pay rent whether or not the landlord has complied with the *Act* or the tenancy agreement.

I have reviewed the notice to end tenancy and I find that it is in the approved form. The landlord was not able to provide me with the date that it was served, and the *Act* states that a tenant has 5 days from the date of service to pay the rent or dispute the notice to end tenancy. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the rental unit on the effective date, which must not be sooner than 10 days after the notice is served on the tenant. In the absence of any evidence to determine when the tenants were served, I cannot grant an Order of Possession.

The tenants have applied for an order cancelling the notice to end tenancy but I find that the tenant has not provided me with sufficient reasons for cancelling the notice. The tenant did not testify that rent had been paid in full, or that the notice to end tenancy is defective. Therefore, I decline to cancel the notice.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without 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: April 22, 2013

Residential Tenancy Branch

