

DECISION

Dispute Codes

For the tenants – CNR, OLC, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenants seek to cancel a 10 Day Notice to End Tenancy for unpaid rent, they seek an Order for the landlord to comply with the Act, regulation or tenancy agreement and to recover the filing fee. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee. The landlord has also applied to keep the tenants security deposit.

The landlord served the tenants in person on March 15, 2010 with a copy of the Application and Notice of Hearing. The tenants served the landlord by registered mail on March 09, 2010 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to cancel the 10 Day Notice to End Tenancy?
- Are the tenants entitled to an Order for the landlord to comply with the Act, regulation or tenancy agreement?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on July 01, 2009. This is a month to month tenancy and the tenants pay a monthly rent of \$860.00 which is due on the first of each month. The tenants paid a security deposit of \$430.00 on June 25, 2009.

The landlord claims the tenants did not pay rent for March, 2010 on the day it was due. The landlord spoke to the tenants who claimed they had paid cash on March 02, 2010 and had posted this through the mail slot. The landlord claims no envelope with cash was in the mail box and he served the tenants with a 10 Day Notice to End Tenancy on March 03, 2010. The landlord claims he managed the building for 15 years and never had any issues with the system to drop rent in the mail box. He also claims he gives a rent receipt to any tenant who asks for one.

The landlord claims the tenants did not pay rent for April, 2010 on the day it was due. Another 10 Day Notice to End Tenancy was served on the tenants on April 02, 2010. The landlord states the tenants paid this rent on April 04, 2010 and a receipt was given for use and occupancy only.

The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover unpaid rent for March, 2010 of \$860.00. The landlord seeks to keep the security deposit of \$430.00 in partial satisfaction of his claim.

The tenants claim the rent was paid for March on March 02, 2010. The female tenant claims this was put into an envelope with the suite number, the tenant's names and the amount written on the front. She claims that she put this into the landlords' mail slot as requested. This tenant claims that as the envelope went in it would not drop down and she could not reach it to get it in or push it down further. The tenant has provided a bank receipt which shows the amount of \$390.00 taken out of the bank on the same day at 1.52 p.m. The tenant claims that this was money towards her share of the rent, she had another \$40.00 in cash and her partner paid the other half of the rent in cash. The tenants have also provided a photograph of the landlords' door with the mail slot and notice stating 'please put rent through the door slot, thank you'. The tenants claim that they do not believe this method of paying rent is very secure as they suggest someone else must have reached through the mail slot and taken the envelope with their rent money. The tenant ask that the 10 Day Notice to End Tenancy is cancelled.

The tenants testify that they received a receipt for their rent from the landlord for the first two months they lived in the unit. Since that time they have had to ask repeatedly for a receipt and did not receive another receipt until April, 2010. The tenants claim they did not want to pay their rent again by cash for April, 2010 and as it was Good Friday the banks were not open for them to get a bank draft to pay rent on the first of the month. The tenants received a second 10 day Notice to End Tenancy on April 02, 2010 and paid the rent on the next day.

When questioned about the missing rent for March, 2010 the tenants answer that they were willing at first to pay the rent again to avoid a dispute but after consideration decided against this as they had already paid it and it was not their fault it had gone missing.

The tenants seek an Order for the landlord to comply with the Act by issuing a receipt for rent payments made in cash.

The landlord testifies that he was at home at 2.00 p.m. when the tenant states she posted her rent in the mail slot and do not hear anything. The landlord also states that the mail slot is narrow and you cannot reach a hand in to remove anything from the box. He states he always advises tenants to pay by cheque or money order so they have proof of payments.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; Based on the testimony, evidence and balance of probabilities I find it is likely that the tenants did pay their rent for March and persons unknown have removed this from the landlords mail slot. The photographs presented of the mail slot do not provided sufficient evidence that a person could not get their hand in and remove items from the box. Therefore, it is my decision that it is the landlords' responsibility to provide a secure system for tenants to pay their rent particularly when payments are made in cash. Subsequently, I find it likely the tenants did pay rent for March, 2010 and the 10 Day Notice to End Tenancy is cancelled and the tenancy may continue. With regard to the 10 day Notice issued on April 02, 2010 I find that as the tenants paid the rent on April 04, 2010 within the five days allowed this served to automatically cancel this Notice.

Section 26 (2) of the Act states: A landlord must provide a tenant with a receipt for rent paid in cash. I find the landlord is in breach of section 26(2) of the Act and therefore **I ORDER** the landlord to comply with Section 26(2) and issue a receipt to tenants for any rent payments paid in cash. This Order is to take effect from receipt of this decision.

As the 10 Day Notice has been cancelled I find the landlord is not entitled to an Order of possession under section 55 of the Act.

As I have found that the tenants rent for March was paid by the tenants I find the landlord is not entitled to a Monetary Order to recover the missing rent money.

As the tenancy will continue at this time I find the landlord is not entitled to keep the security deposit.

As the landlord has been unsuccessful with his application I find he must bear the cost of filing his own application.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated March 03, 2010 is cancelled and the tenancy will continue. As the tenant have been successful in setting aside the Notice, they are entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The landlords' application is dismissed in its entirety 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, 2010.

Dispute Resolution Officer