

DECISION

Dispute Codes: CNR

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. To cancel a Notice to End Tenancy given for unpaid rent or utilities pursuant to Section 46.

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package.

Both parties appeared and gave evidence under oath.

Background, Analysis and Findings

The tenant says that in November 2009 she provided the landlord with new banking information in order to make her automatic rental payments. The tenant says that in spite of having provided that new information the landlord attempted to take the rent using the old banking information and the those attempts were declined by the tenant's bank. The tenant says the manager attempted to gain rent from the wrong account for both of December 2009 and January 2010. The tenant says the manager then demanded cash rental payments which the tenant gave to her. The tenant provided her bank statements to show the cash withdrawals. Further, the tenant provided a receipt for one of the cash payments however the receipt is made out to another tenant with a different suite number. This tenant says she did not notice this at the time and simply accepted the receipt. The tenant says she later learned that the manager was committing fraud and is no longer with the company.

Agent for the landlord is the new building manager. She says she cannot say for sure whether the previous manager might have received and perhaps absconded with the tenant's rent or not. The landlord says the company's records show no rental payments were received from this tenant for December 2009 or January 2010. However the agent says she did not submit the records because she did not know she had to do so.

Neither party submitted the Notice to End Tenancy issued in this matter.

Findings

I find that the tenant has supplied some evidence to demonstrate that she withdrew sufficient funds from her bank account to pay her rent in cash as she says was demanded of her by the previous manager. Although the tenant's evidence is not the

best evidence, the landlord has submitted almost no evidence to support that there are rental arrears. In fact the landlord says she cannot be certain that the tenant did not pay her rent to the previous manager. Based on the combination of some evidence of rental payments being provided by the tenant and insufficient evidence of non-payment being provided by the landlord, I am not satisfied that this tenancy should end for non-payment of rent.

CONCLUSION

The tenant's application is allowed. The Notice to End Tenancy given for unpaid rent for the months of December 2009 and January 2010 is set aside. The effect of this decision is that this tenancy will continue.