

DECISION

Dispute Codes: CNC and FF

Introduction

This application was brought by the tenants seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent dated May 8, 2010. The tenant also sought to recover the filing fee for this proceeding.

Issues to be decided

This application requires a decision on whether to uphold or set aside the Notice to End Tenancy.

Background and Evidence

This tenancy began on September 1, 2009 although the tenant has lived in other units in the building since December 1, 2007. Rent is \$900 per month and the landlord holds a security deposit of \$450 paid on August 12, 2009.

During the hearing, the building manager gave evidence that the Notice to End Tenancy was served after the tenant's rent for May 2010 had not been received.

The parties agreed that they had established a routine in which the tenant would slide the rent in cash under the building manager's door, and he would customarily call shortly after to confirm that it had been received.

In the present dispute, the tenant stated that he had put the envelope under the door as per custom, but the building manager stated that she had not received it. When the discrepancy was discovered, she and the tenant both searched the area.

The parties expressed absolute trust in one another's version of events and both attested to the reliability of one another. The building manager has been in her position for 30 years and the tenant has resided in the building for two and one-half years without incident.

The tenant stated that another party, who had come to assist her with some moving, had been in the building manager's rental unit on the day in question, but she stated that he arrived after the material time.

The building manager stated that she customarily issued receipts, but the tenant stated that was not always the case.

Consent Agreement

Unfortunately, while the parties somewhat casual approach to rent payment worked effectively until the present issue arose, both are now in a position in which it is a practical impossibility to prove their case.

Neither has written documentation or corroborating evidence to establish that the rent was or was not paid.

As the burden of proof lies with the applicant, I must find that the tenant has not proven that he paid the rent and decline to set aside the Notice to End the tenancy.

In recognition of the fact that this situation arose from business practices that were less than astute on both parts, the landlord and tenant agreed to resolve the matter by sharing the loss as follows:

1. The landlord agrees to absorb \$450 of the lost rent payment;
2. The tenant agrees to pay \$450 to the landlord by instalments of \$50 to be added to his rent for each of the following nine months;

As the Notice to End Tenancy was not set aside, and as matters will be resolved by mutual consent, the tenant remains responsible for his own filing fee.

June 29, 2010