



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing was convened by way of conference call on this date to deal with the landlord's application for an Order of Possession for cause, a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application. An agent attended for the landlord, and the tenant also attended the conference call hearing. At the outset of the hearing, the landlord advised that there are currently no rental arrears, and therefore the application for a monetary order for unpaid rent or utilities is hereby withdrawn, and I dismiss that portion of the landlord's application.

Both parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

This tenancy began on May 1, 2009 as a fixed term tenancy which expired on August 1, 2009 and then reverted to a month-to-month tenancy. Rent in the amount of \$600.00 is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$300.00.

The landlord's agent testified that the tenant is repeatedly late paying rent, and issued a 1 Month Notice to End Tenancy for Cause on July 9, 2010, a copy of which was provided in advance of the hearing. The notice has an expected date of vacancy of August 31, 2010 and states that the tenant is repeatedly late paying rent. The landlord's agent also provided in advance of the hearing a copy of a cheque in the amount \$550.00 dated July 5, 2010 payable to the tenant, and testified that the landlord had accepted third party cheques in the past, however could not continue to do so. The agent also testified that an addendum to the tenancy agreement stated that the tenant was required to provide post-dated cheques. A copy of the tenancy agreement was not available at the time of the hearing.

The landlord's agent further testified that the tenant's rent cheque for October, 2009 went missing, and another agent of the landlord drove the tenant to the financial institution to change the address where the rent cheques could be received by the landlord. One other cheque had also gone astray. The landlord was not able to provide dates when rent was late prior to the issuance of the notice to end tenancy, but testified that the tenant paid the rent for August, 2010 on the 6th of August, and rent for September, 2010 was paid on September 5.

The tenant testified that when he arrived at his residence on July 27, 2010 he found a note from the landlord's agent asking him to call, which he did. He was advised that the landlord was unhappy with him and wanted to rent to students only. He further testified that he was never issued receipts for rental payments whether they were paid by cash or by cheque. He testified that the last few times rent was late, but not repeatedly.

Analysis

The *Residential Tenancy Act* cannot be avoided. Firstly, I refer to Section 26:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

The landlord issued a notice to end tenancy for repeated late rent payments but was not able to establish when rent was late prior to the issuance of that notice with the exception of October, 2009 and July, 2010. The notice was issued on July 9, 2010, and any late rent payments after its issuance cannot be considered where the landlord applies for an Order of Possession to uphold the notice.

Section 55 of the *Act* states as follows:

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Although the tenant has not made an application for dispute resolution to dispute the notice, the landlord was not able to establish a minimum of 3 late rent payments prior to the issuance of the notice.

The landlord collected rent on 2 occasions since the issuance of the notice to end tenancy, and did not provide evidence that receipts were issued that showed that the rent was accepted for use and occupancy only, and therefore, I find that the landlord has reinstated the tenancy. I refer to the Landlord and Tenant Fact Sheet respecting Re-instatement of Tenancies:

“Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the tenancy will be automatically reinstated unless the landlord specifically tells the tenant that the tenancy is not reinstated and the tenant will have to vacate the premises at a future date.”

In the circumstances, I find that the landlord did not tell the tenant that the tenancy was not reinstated after accepting a rental payment for a month beyond the effective date of the notice to end the tenancy, and therefore the tenancy has been reinstated.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled and the landlord's application for an Order of Possession is hereby dismissed.

I order that the landlord comply with the *Act* by issuing receipts for all rent payments made in cash.

I further order that the tenant comply with the *Act* by paying rent when it is due.

Since the landlord has not been successful with the application, I decline to award the recovery of the filing fee from the tenant for the cost of this application.

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: September 13, 2010.

Dispute Resolution Officer