



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 28, 2010 and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in 2009. Rent is \$850.00 per month payable in advance on the 1st day of each month. The Landlord's agent said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 28, 2010 by registered mail. The Landlord's agent said the Notice alleged that there were rent arrears of \$2,550.00 however after 'reconciling' the Landlord's records that amount was adjusted to \$850.00. In essence, the Landlord claims he served the Tenant with the 10 Day Notice because he has no record that the Tenant paid rent for July 2010.

The Tenant claims that he did pay rent for July 2010. The Tenant said that he always pays rent in cash and that the Landlord always gives him a receipt. The owner of the corporate Landlord said that he usually retains a duplicate copy of the handwritten receipt issued to the Tenant but on some occasions, a receipt could be issued on a scrap of paper and there would be no duplicate copy. In such cases, however, the owner claimed that he would immediately record the payment on his computer.

The Tenant argued that the Landlord's records were unreliable because it had no record of the rent payments he made in April or August 2010 and that he had to provide the Landlord with a copy of receipts for those months to prove that he had paid the rent. The Tenant could not account for why he could not produce a receipt for the payment of July 2010 rent but argued that he had paid it.



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Analysis

The Landlord's agent argued that it was up to the Tenant to prove that he paid rent for July 2010. However, as the Landlord is the one seeking to end the tenancy for unpaid rent, it is the Landlord who has the burden of proof and must show (on a balance of probabilities) that rent is unpaid. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord's agent claimed that his lack of any record of a payment for July 2010 was evidence that the Tenant had not paid. The Tenant argued that the Landlord's records were not reliable. In particular, the Tenant claimed that it was possible that the Landlord did not have a duplicate receipt for his July 2010 payment and did not record his payment just as had occurred with his April and August 2010 payments. Given the contradictory evidence of the Parties and in the absence of any reliable, corroborating evidence from the Landlord, I find that the Landlord has not provided sufficient evidence to show that rent is unpaid for July 2010 and as a result, the 10 Day Notice dated September 28, 2010 is cancelled and the tenancy will continue.

As the Tenant has been successful on his application, he is entitled pursuant to s. 55 of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding and I order that he may deduct this amount from his next rent payment when it is due to the Landlord.

Conclusion

The Tenant's application is granted. The 10 Day Notice dated September 28, 2010 is cancelled and the tenancy will continue. 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: November 03, 2010.

Dispute Resolution Officer