



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, LAT, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed an application seeking to cancel a 10 day Notice to End Tenancy Due to Unpaid Rent, a request for compensation due to loss or damage suffered due to a breach of the *Act* by the landlord and for authorization to change the locks to the rental unit. The landlord filed an application seeking an Order of Possession and a monetary claim due to the tenant's failure to pay rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the tenant pay an additional month's rent and an additional security deposit on December 28, 2010?

Did the landlord breach the tenancy agreement and *Act* by requesting a security deposit which is higher than the allowable amount?

Should the tenant be authorized to change the locks to the rental unit?

Background and Evidence

The tenant and the landlord entered into a written tenancy agreement on November 29, 2010 commencing a tenancy effective December 1, 2010 for the monthly rent of \$1,950.00 due on the 1st of each month and for a security deposit of \$1,000.00. The tenant provided the landlord with cash on November 29, 2010 in the amount of \$3,000.00 covering the first month's rent and the security deposit.

The landlord stated that the original asking rent was \$2,000.00 but the tenant negotiated a monthly rent of \$1,950.00. The landlord testified that the tenant was to pay the \$2,000.00 for the first month and then \$1,950.00 for the rest of the tenancy.

The landlord also stated that the tenant was to transfer the hydro into the tenant's name as it was not included in the rent. The landlord stated that the tenant was to provide post dated cheques for the rest of the tenancy but the tenant did not have any cheques printed. The landlord stated that banking information was provided to the tenant so that the rent could be directly deposited. The landlord was expecting the tenant to pay the rent owed for January 2011 on December 31, 2010.

The tenant testified that on December 28, 2010 the landlord asked him to sign a second tenancy agreement and move in condition inspection report. The tenant pointed out the following changes made on the second tenancy agreement:

- The commence date of the tenancy was changed from December 1, 2010 to November 30, 2010;
- The rent of \$1,950.00 was due each day;
- The security deposit was identified as being paid on November 30, 2010 instead of December 1, 2010; and
- While both tenancy agreements identify an addendum, the new tenancy agreement indicates that there are four pages to the addendum.

The tenant testified that he was also asked to pay an additional security deposit which he did not question because he is originally from Alberta and two month's rent is required as a security deposit in Alberta. The tenant stated that he gave \$3,000.00 cash to the landlord but did not get a receipt. The tenant did not sign the tenancy agreement and eventually refused to sign the second tenancy agreement and move in condition inspection report.

It is the tenant's position that he has paid the landlord over and above rent owed for January 2011 and that the landlord has overcharged him \$1,025.00 for the security deposit and \$100.00 in rent. The tenant seeks a monetary order for this sum owed and also seeks to have the 10 day Notice to End Tenancy Due to Unpaid Rent set aside.

The tenant also alleges that the landlord has been attempting to illegally access the rental unit, has invaded his privacy by attempting to video tape him and has accessed the mailbox provided to him under the tenancy agreement.

The landlord denies the tenant's allegations and testified that the tenant declined to pay rent on the basis that there was construction noise in the property. The landlord confirmed that the tenant was served with a 10 day Notice to End Tenancy Due to Unpaid Rent on January 1, 2011. The landlord also confirmed that the tenant was issued a 24 hour notice to enter the rental unit at the same time.

The landlord denied receiving money from the tenant on December 28, 2010 and stated that the tenant was to deposit the rent directly into the landlord's account on December 31, 2010. The landlord stated that when the money was not deposited the notice to end tenancy was issued the next day. The landlord provided a copy of the e-mail containing the banking information to the tenant on December 20, 2010.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I dismiss the landlord's claim with leave to re-apply. The landlord's claim cannot proceed because the 10 day Notice to End Tenancy Due to Unpaid Rent was not valid since it was served on the same day that the rent was owed.

The tenant's application with respect to disputing the 10 day Notice to End Tenancy Due to Unpaid Rent is also dismissed.

The issues left to be determined are whether the tenant paid an additional security deposit, whether the landlord charged a security deposit beyond the amount allowed by the *Act*, whether the landlord overcharged the tenant's monthly rent and whether I should authorize the tenant to change the locks to the rental unit.

The landlord and the tenant have presented conflicting verbal testimony about whether the tenant paid the landlord \$3,000.00 on December 28, 2010. The landlord has acknowledged that the tenant originally paid \$3,000.00 at the start of the tenancy and that this amount represents an overpayment of rent by \$50.00 and an overcharge of \$25.00 for the security deposit.

The tenant submits that I should not place any credit or merit to the landlord's evidence given his evidence that the landlord has apparently altered several documents related to this dispute, including the original receipt for the money paid by the tenant and the changes to the tenancy agreement. I agree that these altered documents do not inspire confidence in the landlord's agent's ability to conduct the business of operating a rental

business. However, I am not persuaded that this is sufficient reason to accept the tenant's version of events that he paid an additional \$3,000.00 on December 28, 2010.

In considering the validity of the tenant's testimony I had difficulty accepting the tenant's position that he provided the landlord's agent with \$3,000.00 in cash, without a receipt, while at the same time he was refusing to sign the second version of the tenancy agreement which the tenant was asked to sign. The tenant's testimony that he gave the landlord's agent this cash is inconsistent with how he previously conducted himself. At the start of the tenancy the tenant signed a tenancy agreement and received a receipt for the payment of the rent and the security deposit and I do not believe that the tenant would subsequently issue the landlord's agent more cash without a receipt, especially when the tenant was openly questioning the actions and motives of the agent when she presented the second tenancy agreement. I also find that the tenant's version is inconsistent with how the landlord's agent previously conducted herself when receiving the original payment from the tenant. I am not persuaded that the landlord's agent would accept money from the tenant without issuing a receipt.

For these reasons, I do not accept the tenant's claim that he paid the sum of \$3,000.00 to the landlord's agent on December 28, 2010. As a result, I find that the tenant did not pay an additional security deposit of \$1,000.00 and has not paid rent for January 2011.

I deny the tenant's request for authorization to change the locks to the rental unit. Although the landlord's agent acknowledged accessing the tenant's mailbox, I am satisfied that this was done only to access documents sent to the landlord by the strata corporation. The landlord's agent is cautioned that possession of the mailbox has been transferred to the tenant through the tenancy agreement and she is not authorized to access the mailbox without the tenant's express permission. The landlord should make arrangements to have his mail redirected to a new mailing address.

The tenant has not provided sufficient evidence to confirm that the landlord's agent had been entering his unit without authorization. Based on the verbal testimony before me the agent entered the rental unit once before the tenancy commenced, which was within the landlord's agent's rights, and once after the tenancy commenced after providing 24 hour written notice.

I am satisfied that the tenant made an overpayment of \$50.00 for this rent owed for December 2010 and overpaid the security deposit by \$25.00. The tenant is authorized deduct the sum of **\$75.00** from the rent owed to the landlord for January 2011. Finally, since the tenant has been partially successful in this application, I find that the tenant

may recover **\$25.00** of the \$50.00 filing fee paid for this application from the landlord. After making allowable deductions the tenant currently owes the landlord the sum of **\$3,825.00** of unpaid rent comprised of \$1,850.00 for January 2011 and \$1,950.00 owed for February 2011.

The landlord is at liberty to issue the tenant a new 10 day Notice to End Tenancy Due to Unpaid Rent if the tenant fails to pay the rent owed under the *Act*.

Conclusion

The landlord's application for Dispute Resolution is dismissed with leave to re-apply. The landlord is at liberty to serve the tenant a new 10 day Notice to End Tenancy Due to Unpaid Rent if the tenant fails to pay the outstanding rent owed of **\$3,825.00** by the February 2, 2011.

The tenant's application has been partially accepted. I have determined that the tenant overpaid his December 2010 rent by \$50.00 and overpaid his security deposit by \$25.00. I have authorized the tenant to recover these overpayments by deducting it from the rent owed to the landlord for January 2011.

I have not accepted the tenant's claim that he paid the rent for January 2011 or that he paid an additional security deposit. I also denied the tenant's request to change the locks to the rental unit.

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: February 1, 2011.

Residential Tenancy Branch