



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant is responsible to pay \$1,525.00 per month in rent in advance on the first day of each month. The parties further agreed that in April 2009, the landlord was travelling outside the country and asked the tenant to withhold her rent for that month so she would have funds on hand in the event repairs were required in his absence. In an email exchange in March 2011, the landlord stated that he would “assume the retainer,” referring to the April 2009 rent. As of the date of the hearing, the tenant had not yet paid rent.

The landlord had held post-dated cheques up until the end of March 2011. In March 2011 the landlord made a monetary claim against the tenant in which he listed as his address for service the address of C.I., whom he referred to as his property manager. There is no indication that the tenant had any other address for service for the landlord. The tenant testified that on March 31, she placed her rent cheque for the month of April into the mailbox of C.I. The parties agreed that on April 2 the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”), alleging that she owed \$3,050.00.

The parties further agreed that on April 2, the tenant sent the landlord an email. The landlord acknowledged having received the email, but testified that he did not open it. In the email, the tenant indicated that the cheque had been placed in C.I.'s mailbox and stated that since the landlord had served her with the Notice, he must not have received the cheque. The tenant indicated in the email that she would replace the cheque and asked the landlord if he would meet her in person to receive payment.

The parties agreed that on April 15, the tenant placed a cheque for \$1,525.00 under the door of C.I.'s residence. The landlord acknowledged having received that cheque and issued a receipt for use and occupancy.

The landlord took the position that as of April 1, the tenant owed \$3,050.00 in rent which included rent for April 2009 and rent for April 2011. He argued that the \$1525.00 payment of April 15 did not satisfy the entire debt and that he should therefore be entitled to end the tenancy.

Analysis

Generally, parties have a set method by which rental payments are to be made. In this case, the landlord had not been in the practice of attending at the rental unit regularly to collect rent and when he had negotiated the last of the post-dated cheques he held, there was no arrangement defining the means by which the tenant was to pay rent. I find that the tenant reasonably expected that payment to the property manager, whose address was also the landlord's address for service, would satisfy her obligation. I accept that the tenant attempted to pay her rent by depositing the cheque into C.I.'s mailbox. Where that cheque went is somewhat of a mystery and does not need to be determined.

When the tenant became aware that the landlord had not received her cheque, she immediately contacted him via email, which was the means of communication used by the parties for a considerable time. I find that the tenant was ready to pay her rent and did not leave the cheque with C.I. as she had reason to believe that he already had one cheque and had not forwarded it to the landlord. I find that by refusing to communicate with the tenant in the 5 days following service of the Notice, the landlord thwarted her attempts to pay her rent.

There is no question that the landlord is entitled to the rent payable for April 2009. However, the agreement between the parties did not include a provision that the rent was payable on demand and after the passage of two years' time, I find that the landlord should have put the tenant on notice that the rent had to be paid to him and that he should have given a reasonable timeframe in which to make that payment. I

therefore find that the April 2009 rental payment cannot be properly considered rental arrears until the landlord has given the tenant a reasonable timeframe in which to make the payment and specified a date. I would suggest that one full month is reasonable.

In light of the above and because the landlord has received full payment of rent due for April 2011, I find that the landlord does not have grounds to end the tenancy. I order that the Notice be set aside and of no force or effect. I dismiss the landlord's claim for April 2011 rent as that debt has been satisfied and I dismiss with leave to reapply the claim for rent for April 2009.

The landlord will bear the cost of his filing fee as he has been unsuccessful in his application. I find that the tenant should recover the cost of her filing fee and I award her \$50.00. This sum may be deducted from future rent owed to the landlord or from the April 2009 payment.

Conclusion

The Notice is set aside and the landlord's claim for payment of April 2009 rent is dismissed with leave to reapply. The tenant is awarded \$50.00.

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: April 29, 2011

Residential Tenancy Branch