



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MND, MNR, OPR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy and a request for recovery of the filing fee.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy, a request for a monetary order for damages, and a request for recovery of the filing fee.

First of all it is my decision that I will not deal with all the issues that the landlord has put on his application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request for an Order of Possession, and the request for recovery of the filing fee and I dismiss the remaining monetary claim, with liberty to re-apply.

Background and Evidence

On May 19, 2011 the landlord served the tenant with a Notice to End Tenancy for cause, with numerous reasons checked off on the notice, I dealt with the first reason given which was “the tenant is repeatedly late paying the rent”.

The landlord testified that:

- The tenant has frequently been late paying the rent, however the rent was usually paid close to the beginning of the month and therefore rent receipts were always issued stating that the rent was paid on the first of the month.
- In recent months the rent has been paid well past the first of the month, and therefore the receipts reflect the actual date that rent was received.
- Originally the agreement was that the tenant would deliver the rent on the first of each month, however the tenant stop doing that and instead started leaving a rent cheque on a shelf in the garage for the him to pick up.
- He went to the house daily to check for the rent, however the rent was not available to pick up until the dates indicated on the receipts he has issued as follows:
 - February 4, 2011
 - March 4, 2011
 - April 6, 2011

The landlord is therefore requesting that the Notice to End Tenancy be upheld as the rent has been repeatedly late.

The tenants testified that:

- The rent is always put in the garage on the first of the month for the landlord to pick up; however the landlord does not always pick it up on the first of the month.
- The landlord picks up the rent late and then issues the rent receipt late.
- The reason he does not find it on the first of the month, is because the rent cheque is often left in the garage late in the evening, but it is always there on the first of the month.
- It is not their fault that the landlord does not always pickup the rent even though it's ready to be picked up.

The tenants are therefore requesting that the Notice to End Tenancy be cancelled.

Analysis

It is my decision that the tenants have not met the burden of proving that they have paid their rent on the first of the month every month.

By far the majority of the receipts issued by the landlord stated the rent was received on the first of the month, even though the landlord says that on numerous occasions it was one or two days late. Therefore I find it unlikely that the landlord would suddenly start issuing rent receipts that state that the rent is four days or six days late, if it had been available to pick up on, or close to, the first of the month.

Further, rent is due on the first of the month and that means that the tenants must ensure that its available at a reasonable time for the landlord on the first of the month, and it is not reasonable for the tenants to leave the cheque for the landlord late at night knowing that it unlikely that the landlord will come to retrieve it at that time of night. Rent must be available to be picked up within reasonable business hours.

Therefore it is my decision that I will not set this Notice to End Tenancy aside and that this tenancy ends at the end of June 2011.

Having upheld the Notice to End Tenancy for repeatedly rent payments there is no reason for me to make any finding on the other reasons given for ending the tenancy and I will not do so.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

I have issued an Order of Possession to the landlord for 1:00 p.m. on June 30, 2011, and I have ordered that the tenants reimburse the landlord for the \$50.00 cost of the filing fee that was paid by the landlord.

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: June 20, 2011.

Residential Tenancy Branch