



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy.

By the landlord: as an application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence, to cross examine the witnesses, and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the Notice to End Tenancy?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a self contained suite in a single detached home. There is no written agreement in this tenancy, which started month to month on December 1st, 2010. The rent is \$540.00 per month.

There was no documentary evidence before me from the landlord. He testified that he did not receive rent for May and June 2011. He said that he called the tenant at some point concerning May rent, and that a person posing as E. answered. The landlord stated that E. lives with the tenant and is actually her friend P.M. The landlord said that during this conversation P.M. raised issues about the condition of the unit, to which the landlord replied that he should first concern himself with paying the rent. The landlord said that he had no further exchange and that he did not even bother trying to collect June's rent.

The landlord called witness F.C. to testify concerning P.M's identity as being E., as he raised an issue of credibility within this dispute. Witness F.C., tenant in another unit in the house, testified that E. was present when the unit was showed to the tenant. She described E. as 30 years old, 5'5 to 5'6", thin and brown hair, and living with the tenant.

In her documentary evidence, the tenant provided in part copies of rent receipts for January to March 2011, a bank statement showing a withdrawal on April 25th, 2011 for \$500.00, and a written statement from her friend P.M. bearing witness that he saw the tenant pay the landlord rent in cash on April 30th, 2011, at approximately 2:30PM. That same friend provided another statement in which he described that he also saw the tenant pay the landlord rent for June 2011, and that the landlord refused to give the tenant a receipt.

The tenant also provided a copy of a letter dated June 6th, 2011, from her life skills counsellor, wherein she described in part the tenants' difficulties in obtaining a receipt for rent from the landlord; the tenant's contact with an advocate; and the tenant's service of documents related to this dispute to the landlord and his counsel.

The tenant testified that she has always paid rent and that she is the only occupant in the rental unit. She said that she does not know any E., and described P.M. as 6', 200lbs, and calico hair. She stated that the person who viewed the unit with her was her uncle P. She said that her friend P.M. visits her 4 to 5 days a week, but has no knowledge of an E., and that she is the only tenant living in the unit.

P.M. testified that he was present when the landlord received the rent in cash for both May and June 2011, and that the landlord did not give the tenant a receipt. P.M. answered the landlord's counsel concerning the frequency of his visits and relationship with the tenant. The landlord's counsel also asked the tenant and P.M. clarifying questions on the statements provided in the tenant's evidence package.

The landlord stated that the tenant's testimony is a complete fabrication and that the rent collection she described in May and June never occurred.

Analysis

The landlord bears the burden to establish sufficient proof, on the balance of probabilities, for ending the tenancy.

I have no evidence from the landlord that he took steps to collect rent by approaching the tenant. His version of events concerning rent collection was vague and non-specific; the only step he took was to make a single call at an unspecified date and whoever he spoke with at that time was not the tenant. The landlord then stated that he did not bother taking any steps for June's rent.

I find this uncharacteristic of a landlord whose primary role in a tenancy is to ensure rent is paid by his tenants. He did not keep, or at least did not provide the sort of records that a businesslike landlord would be expected to maintain; he has not produced any ledger or account books showing or recording rental receipts. I find that the landlord has not shown on a balance of probabilities that the rent for May and June was not paid.

On the other hand I heard evidence that the tenant paid rent to the landlord in the presence of a witness. That witness gave evidence to support his written statements. The tenant also presented documentary evidence which included a withdrawal statement to support her testimony.

I am not satisfied on the preponderance of the evidence that the tenant did not comply with the Act concerning paying rent and I find the Notice to End Tenancy of no effect.

Conclusion

The 10 Day Notice to End tenancy is set aside. The tenancy will continue and the landlord's application is dismissed.

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 23, 2011.

Residential Tenancy Branch