



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy for unpaid rent and to recover the filing fees associated with this application.

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

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Background and Evidence

The rental unit consists of a two bedroom duplex. The landlord testified that there was no written agreement with this tenancy. It was not disputed however; that the tenant moved in during the first week of October; that rent is \$950.00 per month; and that the tenant paid a pro-rated adjustment amount of \$700.00 in cash for that month.

The landlord stated that the tenant dealt with his father, and that his father said that the tenant did not pay rent for November 2011. He stated that he spoke again to his father on this day and that rent remains outstanding.

In his documentary evidence, the tenant provided a copy of the 10 day Notice to End Tenancy that was completed by this landlord. The tenant testified that on November 1st, he met the landlord's father and that he paid rent in cash by giving 9 one hundred dollar bills, and a fifty dollar bill. He stated that he asked for a receipt and that the landlord's father said that he did not have one at the time, but that he would provide one later. The tenant said that the landlord's father approached him on November 6th about unpaid rent, and that he reminded him that he paid it in cash on the 1st and that he did not get a receipt as promised. The tenant said that he called the landlord immediately and left a message in his voice mail. He said that the landlord never called back and that he received a 10 Day Notice to End Tenancy instead. He said that the landlord has refused to deal with him in an attempt to resolve this issue. He said that the landlord's father is 78 years old, that he has dementia, that he is very forgetful, and that there is also a language barrier.

The tenant also provided a copy of a financial transaction from the bank showing a \$1500.00 cash withdrawal dated November 1st, 2011 out of which he states that he paid rent that day.

The landlord objected to the tenant's characterization of his father; he said that his memory loss is not severe to the point where he would forget that the tenant paid rent. He said that if the tenant had paid rent he would have been given a receipt because that is the way he and his father do business. The landlord made an oral request for an order of possession.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy. The landlord did not deal with the tenant concerning what took place on November 1st between the tenant and the landlord's father, and the landlord's father did not attend the hearing; therefore the landlord's testimony was silent concerning this crucial aspect of the claim that the tenant did not pay the rent. Concerning the way the landlord and his father do

business, I note that there is no tenancy agreement contrary to section 12 of the Residential Tenancy Act, and that there is no documentary evidence before me from the landlord. I find this uncharacteristic of a landlord whose primary role in a tenancy is to ensure rent is paid by a tenant. He did not provide any records that a businesslike landlord would be expected to maintain; he did not produce a ledger or an accounting book or any entries to counterfoil the tenant's testimony and documentary evidence that would allow me to make an informed decision. I find that the landlord has not proven on a balance of probabilities that rent has not been paid for November 2011, and I find the 10 day Notice to End Tenancy of no effect.

Conclusion

The tenancy will continue. Since the tenant was successful, the tenant is entitled to recover the filing fee as a one-time \$50.00 deduction from the next rent payment.

Since I uphold the tenant's application, the landlord's oral request for an order of possession 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: November 28, 2011.

Residential Tenancy Branch