



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR OPR MNR FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession and a monetary order for unpaid rent. The tenant applied to cancel the notice to end tenancy and for an extension of time to make his application. Both the landlord and the tenant participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue – Extension of Time

The landlord served the tenant a notice to end tenancy for unpaid rent by posting it to the tenant's door. The notice is dated December 13, 2011. The landlord did not have a witness present when he posted the notice. The tenant stated that he received the notice on December 15, 2011. The tenant would then have had five days to apply to cancel the notice to end tenancy. The tenant did not apply to cancel the notice until December 22, 2011. The tenant stated that the reason he did not apply to cancel the notice until then was that he and the landlord had been discussing ending the tenancy, because the landlord was planning to abandon the house. The landlord did not dispute that such discussions took place.

I found that the landlord was not clear in his intentions regarding the tenancy, particularly at the time he issued the notice to end tenancy, and I therefore granted the tenant an extension of time to apply to cancel the notice to end tenancy.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in the last week of September 2011. Rent in the amount of \$1200 is payable in advance on the first day of each month. In December 2011 the landlord served the tenant with a notice to end tenancy for unpaid rent. The notice indicates that as of December 1, 2011 the tenant owed \$2300 in unpaid rent.

Evidence of the Landlord

As of December 1, 2011, the tenant had paid \$1900 for rent and the security deposit. The tenant was therefore in arrears of \$1100 for November 2011 rent and \$1200 for December 2011 rent. The tenant made rent payments in cash but the landlord did not issue receipts. The landlord did not provide any supporting evidence to establish the amounts the tenant had paid.

Evidence of the Tenant

The tenant paid a security deposit of \$200, rent of \$1200 for October 2011 and \$900 for November 2011. In November 2011 the landlord and the tenant had a verbal agreement that the tenant would only pay \$900 for that month. The tenant did not pay any rent for December 2011 or January 2012.

Analysis

I find that the notice to end tenancy is not valid. A notice to end tenancy for unpaid rent must indicate the correct amount of rent owing. The landlord did not provide sufficient evidence that the tenant owed \$2300 in unpaid rent on December 1, 2011. When a tenant pays rent in cash, the landlord is required to issue receipts for the rent paid. In this case the landlord did not issue receipts, and he provided no other supporting evidence to establish the amount of rent owing. The notice to end tenancy for unpaid rent is therefore cancelled.

The tenant acknowledged that he did not pay \$300 of the rent for November 2011, and he did not pay any rent for December 2011 or January 2012. The landlord disputed any agreement with the tenant regarding a reduction of rent for November 2011. I therefore find that the tenant owes \$300 for November 2011 and \$1200 for each month of December 2011 and January 2012, and the landlord is entitled to this amount.

As the landlord was only partially successful in his application, I find he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

I dismiss the portion of the landlord's application regarding the order of possession. The notice to end tenancy for unpaid rent is cancelled, with the effect that the tenancy continues.

The landlord is entitled to \$2700 in unpaid rent. I grant the landlord an order under section 67 for the balance due of \$2700. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 11, 2012.

Residential Tenancy Branch