



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a ten day notice for unpaid rent issued on February 2, 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Should the ten day notice to end tenancy issued on February 2, 2012 be cancelled?

Background and Evidence

The tenancy began on September 1, 2011. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant.

The tenant was served with a notice to end tenancy for non-payment of rent on February 2, 2012, by personal service. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice. The tenant filed an application for dispute resolution to cancel the ten day notice within the five days as required by the Act.

The tenant testified that on January 30, 2012, he was at the bus stop going to work when his friend approached him. The tenant states his friend told him the landlord was looking for February 2011, rent. The tenant states he told his friend where the rent money was and his friend took the money and paid the landlord.

The landlord testified that usually the tenant comes to his residence to pay his rent and sometimes the tenant is a few days late and sometime the tenant is a little short, but he has always been okay with that arrangement. The landlord states he never asked the tenants friend on January 30, 2011, to get February 2011, rent from the tenant.

The landlord testified that on February 2, 2012, he met the tenant outside of the rental unit and asked the tenant if he had the rent money. The landlord states the tenant looked genuinely surprised by the question and tenant said his friend pay the rent money.

The landlord testified the tenant went to his rental unit to find his friend and the tenant returned with the friend who said, "I paid you the rent the other morning".

The landlord testified that he has never seen this person before, and was surprise how easily this person could lie to him. The landlord further states it was impossible for this person to have paid him any rent on the morning of the January 30, 2011 as he was not home.

The landlords believe the tenants friend to advantage of him and took his rent money.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the evidence of the tenant was that his friend approached him and said the landlord was looking for February 2012, rent. The tenant told his friend were the rent money was located and the tenant believes his friend paid the landlord February 2012, rent.

The evidence of the landlord was he never asked the tenant friend to get the tenants rent money and believes that the tenant friend to advantage of him by taking and keeping his rent money.

I believe the tenant genuinely believes his friend paid February 2012, rent. However, the tenant did not have his friend testify on his behalf. I find that the landlord's testimony to be reasonable, and there was no reason for the landlord to change the usual practise between the parties for collection of rent.

I find that the tenant has not paid rent for February 2012. Therefore, the tenant's application to cancel the ten day notice issued on February 2, 2012, is dismissed

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
(a) the landlord makes an oral request for an order of possession, and
(b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application to cancel the ten day notice issued on February 2, 2012, is dismissed.

The landlord is granted an order of possession

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: February 23, 2012.

Residential Tenancy Branch