



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MT, OPR, MNR

Introduction

This hearing dealt with an application by the tenants for orders setting aside a one month notice to end tenancy (the “Cause Notice”) and a 10 day notice to end tenancy (the “Rent Notice”) and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Should the Rent Notice be set aside?
Should the Cause Notice be set aside?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed that the tenants were obligated to pay \$694.00 in rent in advance on the first day of each month. Sometime in late February 2012, the landlord served the Cause Notice on the tenants. The parties agreed that on or about March 1, the tenants spoke with the building manager, F.L. The tenants claimed that they were prepared to pay the rent on that date but that F.L. told them she understood if they didn’t want to pay their rent since they had been served with the Cause Notice, so the tenants chose not to pay the rent. F.L. testified that the tenants told her that they would not pay the rent and that she had responded that they should do whatever they thought they had to do.

F.L. testified that she served the tenants with the Rent Notice on March 6 by posting it on the door of the rental unit. At the beginning of the hearing, the tenants testified that they received the Rent Notice on March 7. However, after I advised that they had not disputed the Rent Notice within 5 days of the time they received it, they testified that they had not actually received the notice until March 9. The tenants claimed that after receiving the Rent Notice, they went to F.L. and offered to pay the rent but she refused to accept it. F.L. denied that the tenants ever offered to pay rent.

Analysis

When a landlord alleges that rent has not been paid, the burden shifts to the tenants to prove that no rent is owing. While I accept that the tenants may have misinterpreted F.L.'s remarks made on March 1 to mean that they were excused from paying rent in March, I find that service of the Rent Notice put the tenants on notice that rent for March had not been forgiven. I do not accept that F.L. refused to accept rent after the tenants received the Rent Notice. The tenants' application for dispute resolution makes no mention of the landlord's refusal to accept rent and I find it likely that had rent been refused, the tenants would have stated as much in the details of their dispute in their application for dispute resolution. Rather, the tenants appeared to rely on the landlord's alleged forgiveness of March's rent. The tenants' testimony was also inconsistent in that they did not allege that the landlord refused rent after they had received the Rent Notice until I asked them why they had not paid rent after having received that notice. For these reasons I find the landlord to be more credible than the tenants and where their testimony conflicts, I prefer the evidence of the landlord.

I find that the landlord did not forgive rent for the month of March and that the tenants were obligated to pay rent on March 1. The tenants' testimony regarding when they received the Rent Notice was inconsistent. However, even if I accept that they received the Rent Notice on March 9, they did not apply to dispute the notice until March 15, 6 days after they received it. They were not able to provide a reasonable explanation as to why they were late in filing their application. In order to grant the tenants an extension of time in which to dispute the notice, I must be satisfied that exceptional circumstances prevented them from acting within the statutorily prescribed timeframe. I find that there were not exceptional circumstances at play and deny the tenants' application for an extension of time. I find that the tenants did not pay or attempt to pay rent within 5 days of having received the Rent Notice and did not file their application for dispute resolution until 6 days after they had received it and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I note that even if the tenants had filed their application within the required timeframe, I would have dismissed their claim as I have found that they were obligated to pay rent for the month of March and had no legal basis to withhold the rent.

I dismiss the tenants' application to set aside the Rent Notice and I grant the landlord an order of possession. Should the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order under section 67 for \$694.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the tenancy is ending, it is unnecessary to address the merits of the Cause Notice and I dismiss the tenants' claim to dispute that notice.

Conclusion

The tenants' claims are dismissed. The landlord is granted an order of possession and a monetary order for \$694.00.

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: March 26, 2012

Residential Tenancy Branch