



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Zahra Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD and FF
Tenant: CNR

Introduction

This hearing addresses applications by both the landlord and the tenant.

The landlords' application of May 1, 2013 sought an Order of Possession in support of a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on April 12, 2013. The landlord also seeks a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

The tenant's application of April 19, 2013 sought to have the Notice to End Tenancy of April 12, 2013 set aside.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be supported by an Order of Possession and monetary award as requested by the landlord or set aside as requested by the tenant.

Background, Evidence and Analysis

The parties agree that they had entered into a rental agreement for a tenancy to begin on April 1, 2013 and that the tenant was given the keys on March 30, 2013. Rent was \$700 per month and the tenant paid a security deposit on \$350 on March 12, 2013.

The matter in dispute is whether the tenant paid the rent on March 30, 2013 as claimed by the tenant or whether she did not do so as claimed by building manager, DR.

The parties agree that the tenant attended at the rental unit on March 28, 2012 to participate in completion of the move-in condition inspection report and while it was intended that she pay the April rent at that time, she stated that she did not have the funds with her and would pay at the next meeting on March 30, 2013.

The parties met in the lobby of the rental building on the late afternoon of Saturday, March 30, 2013 at which time the tenant stated that she had given the DR an envelope containing \$700 in \$20 bills which he counted. She stated that she did not wait for a receipt because her child had been fussing in the car of a friend who had driven her to the appointment.

The building manager, DR, gave evidence that the payment had not been paid as claimed by the tenant. Matters came to a head after the building manager SA sent the tenant a rent due reminder on April 10, 2013 followed by the 10-day Notice to End Tenancy served on April 12, 2013.

In support of the tenant's version of events, she submitted into evidence a letter from the friend who had driven her to the appointment which stated that, she had seen the tenant put the \$700 into a Coast Capital envelope and seal it. She stated that, from the car where she had stayed to watch the children, she saw the tenant give the envelope to DR who appeared to count it and converse with the tenant.

The tenant also submitted a copy of her bank statement showing a \$100 withdrawal on March 24th, a \$500 withdrawal on March 28th and a hand written notation that a \$188 withdrawal on March 30, 2013 included \$100 cash-back, all of which she said made up the \$700 paid to the landlord on March 30, 2013.

In support of the landlord's version, the property manager gave evidence that DR has been an employee of the corporate landlord for eight years and has an unblemished record. He stated that a subsequent confrontation between DR and the tenant, while regrettable, was a result of a genuine affront felt by DR and what he believed was a false accusation and aspersion on his character. Following that confrontation, the tenant involved her ex-spouse whose visit to the rental building resulted in police attendance.

The property manager stated that that it is a strict policy that staff do not accept cash without issuing a receipt and that payments are only be accepted in the office where there is a safe. He said DR has always followed that practice to the letter.

The other building manager, SA, noted that when the tenant first approached her regarding the notice of late payment, she had stated that had paid the rent in two installments, which the tenant said was a misinterpretation of her advice to SA that she had paid after making two withdrawals from her account.

SA also noted that, while the tenant told DR that she had no money on March 28, 2013, her own evidence shows that two of the three withdrawals shown on the bank statement were made on or before that date.

Analysis

When a hearing is convened on a dispute over a Notice to End Tenancy, the burden falls to the landlord to prove the rent was not paid. In the present matter, the landlord is placed in the difficult, if not impossible position, of proving a negative, that the rent was not paid.

While I find the evidence submitted by the landlord's representatives to have been given sincerely, there is no direct evidence of the exchange between DR and the tenant in the lobby on the afternoon of March 30, 2013.

The tenant has shown poor judgement if, as she claims, she made payment of \$700 and did not take the time to wait for a receipt, and in involving her ex-spouse in a disagreement which I believe SA and the property manager were quite willing to explore in a civil manner.

However, the witness statement and the bank statement submitted into evidence raise some doubt as to the possibility that the tenant made the payment and for some reason it was misplaced or forgotten in an exchange which was rushed by the tenant's preoccupation with her waiting friend and fussing child.

Therefore, I find that the Notice to End Tenancy should be set aside on the grounds that, in the absence of definitive proof that the rent was not paid, the benefit of the doubt should favor the tenant.

Conclusion

The landlord's application is dismissed without leave to reapply, the Notice to End Tenancy of April 12, 2013 is set aside and the tenancy continues.

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: May 16, 2013

Residential Tenancy Branch