



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Norman Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, CNR

Introduction

This is an application to cancel two Notices to End Tenancy that were given for nonpayment of rent, and a request for a Monetary Order for \$5000.00.

A substantial amount of documentary evidence, photo evidence, video evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with request to cancel the Notices to End Tenancy, and I dismiss the remaining Monetary Claim with liberty to re-apply.

Therefore the issue I'm dealing with is whether or not to cancel or uphold the Notices to End Tenancy that have been given for nonpayment of rent.

Background and Evidence

The landlord testified that:

- The tenant has paid no rent since February 2013.
- Rent was paid for February 2013 by cheque, and a receipt was issued for use and occupancy only.
- The tenant has paid nothing whatsoever since that date.
- He is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that:

- Rent has been paid as ordered by the Residential Tenancy Branch in previous hearings.
- Rent was paid by his witness M.I. in the amounts of \$150.00 that was paid on March 1, 2013, \$450.00 that was paid on April 1, 2013, and \$450.00 it was paid on April 26, 2013 for the month of May 2013.
- The tenant first stated that he had no evidence of having paid this rent as they were unable to get the cheques from the bank, and then later stated that the reason they had no evidence was that the landlord did not cash any of the cheques.

- No rent has been paid for the months of June 2013, July 2013, and August 2013, as a previous dispute resolution decision ordered that no rent was payable until repairs were completed.
- He is therefore requesting that the Notice to End Tenancy be canceled and this tenancy continues.

Witness for the tenant testified that:

- She paid rent for the tenant three times. The first was a cheque for \$1500.00 paid on February 3, 2013, the second was a cheque for \$450.00 paid prior to March 1, 2013, and the third was a cheque for \$450.00 paid prior to April 1, 2013.
- The cheques were put through the landlord's mail slot; however the landlord did not cash any of those cheques.
- Under questioning from the tenant the witness stated that she may not have paid \$450.00 on March 1, 2013 and that in fact it may well have been only \$100.00.
- When asked by the tenant whether any rent was paid for May 2013, the witness stated oh yes maybe she did pay for May 2013 as well.

In response to the tenant and the tenants witness's testimony the landlord stated that:

- He has never received any cheques from the tenants or the tenants witness since the one paid in February 2013.
- He further stated that he thinks that the inconsistency in the testimony between the tenant and his witness further shows that there testimony is not truthful.

Analysis

It's my finding that the tenant has not met the burden of proving that he has paid any rent since February 2013.

The tenant claims that the rent was paid by his witness in the amounts of \$150.00 for March 1, 2013, \$450.00. April 1, 2013, and \$450.00 for May 2013.

The tenants witness's testimony however was inconsistent with that of the tenant. She originally claimed that she had paid the rent to the landlord three times, \$1500.00 on February 3, 2013, \$450.00 for March 2013, and \$450.00 for April 2013.

Subsequently the witness changed her testimony and stated that she maybe only paid \$100.00 for March 2013 and that she most likely paid a fourth cheque of \$450.00 for May 2013.

In the absence of any supporting evidence, and considering the inconsistencies between the tenant's testimony and the tenants witness's testimony it is my finding that I prefer the landlord's testimony that no rent has been paid since February 2013.

I therefore will not cancel the Notice to End Tenancy and will be issuing an Order of Possession as requested by the landlord.

Conclusion

As stated above the monetary portion of this claim is dismissed with leave to reapply.

The tenant's application to cancel the Notice to End Tenancy is dismissed, and I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

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: August 26, 2013

Residential Tenancy Branch

