



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural Matters

At the outset of the hearing the landlord's telephone connection was extremely poor. The landlord's telephone connection unexpectedly disconnected. The landlord was able to re-connect using a different telephone line and we continued with the proceeding. During the time the landlord's line was disconnected I did not hear any testimony from the tenants.

Issue(s) to be Decided

Has the landlord established an entitlement to recover unpaid rent from the tenants in the amount claimed?

Background and Evidence

The landlord requested compensation for unpaid rent for the period of November 1, 2012 through February 15, 2013 in the amount of \$2,450.00 plus storage fees of \$150.00 per month for three months for a total claim of \$2,900.00.

I was provided the following submissions by the landlord:

- Multiple persons occupied the rental unit and one of them signed a written tenancy agreement on July 15, 2011.

- The rent was set at \$700.00 payable on the 1st day of every month starting August 1, 2011.
- The tenant and/or the other occupants paid rent in cash.
- The landlord did not issue receipts for the cash payments.
- The landlord did not receive rent starting November 1, 2012.
- The rental unit was vacated February 15, 2013 but the parties agreed that the occupant's possessions would be stored in the garage for a monthly charge of \$150.00.
- The possessions remained in the garage until May 10, 2013.

I was provided the following submissions by the tenant:

- The tenant did not ever sign a tenancy agreement and submitted that the copy submitted for my review was a fraudulent document.
- The rent was initially set at \$600.00 per month and then increased to \$700.00 per month without a Notice of Rent Increase.
- Rent was always paid in cash and the landlord did not issue receipts.
- After the tenant went to India, rent was paid to the landlord by the tenant's brother up until February 15, 2013.
- There was a significant water leak at the property in February 2013 and the rental unit was vacated as a result.
- The landlord indicated the tenant's water damaged possessions could be stored in the garage as the landlord would attempt to include the damaged possessions in an insurance claim.
- There was no discussion about paying the landlord \$150.00 per month to store the damaged possessions.
- The possessions were retrieved from the property May 10, 2013.

The landlord had not been forthcoming about the water leak at the property but acknowledged that a leak did occur on February 9, 2013 after the tenant raised the issue. The landlord claimed, however, that very little of the tenant's possession were damaged.

At one point in the hearing, the person assisting the landlord stated the landlord never collected a dime of rent from the tenant or the occupants and that is why receipts were not issued. When I noted that the tenancy was in effect 1.5 years the agent rescinded his statement and claimed the statement was made due to an error in translation.

I noted that the landlord had not provided a copy of or made any submissions regarding a 10 Day Notice.

After both parties had been heard, I expressed reservations about the landlord's claim given the opposing testimony, the absence of rent receipts, and I was not provided a copy of a 10 Day Notice. The landlord then changed his submissions to say that rent receipts had been prepared but that the tenant has not picked them up, along with his mail. The landlord's assistant then submitted that he is the one that served the 10 Day Notice and indicated that a copy could be submitted. I did not request or authorize the submission of additional documentary evidence.

Both parties provided consistent testimony that the parties are from the same village in India and that there was some level of trust due to this commonality and that is why receipts were not given or required for cash payments.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I was presented with submissions that were mostly refuted by the tenant and then I was provided with changing testimony on the landlord's part. I found the changing testimony significantly damaged the landlord's credibility.

Having heard both parties mention that they were from the same village in India I find it more likely that the parties conducted themselves without the formal documentation required under the Act, as submitted by the tenant. Nevertheless, even if a written tenancy agreement is not executed, the Act and my authority to enforce the Act, still applies to tenancy agreements formed orally.

I find, on the balance of probabilities, that a tenancy did form between the parties by way of a verbal agreement. The difficulty is that I was provided opposing testimony as to the amount of the rent payable when the tenancy formed; whether rent was paid for

November 2012 through February 2013; and, I was not provided copies of a 10 Day Notice or receipts for cash payments that were allegedly issued or prepared.

Given the above, I find the landlord did not meet the burden to prove his case against the tenants for unpaid rent and I dismiss that portion of the landlords' claims.

Similarly, I find the opposing submissions and lack of other evidence to be insufficient to conclude the tenants owe the landlord \$450.00 for storage and I dismiss that portion of the landlord's claim.

Conclusion

The landlord's Application has been dismissed in its entirety.

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: September 17, 2013

Residential Tenancy Branch

