



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, opr, mndc, mnsd, ff,

Introduction

The tenant has applied for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities).

The landlord has also applied for dispute resolution, and requests an Order of Possession, a Monetary Order, and an order to retain the security deposit.

Issues to Be Decided

- Is the Notice to End Tenancy (the “Notice”) served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenant to the landlord?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on October 1, 2013. The tenant rents a basement suite in the landlord’s home. Rent is due on the 1st day of each month in the amount of \$750.00. A security deposit of \$375.00 was paid at the start of the tenancy.

The tenant testified that on October 31, 2013, he met the landlord in his suite, and he had cash to pay his rent. The landlord did not have a receipt, and so he did not give her the rent money. The landlord at this time also gave him a letter, which was not on a proper form, saying he must move out within 15 days. The following evening, on November 1 after work at about 10:00 pm, he went to the landlord’s door with a friend, and tried to pay the rent with a cheque. The landlord refused to accept the cheque. On November 2, 2013 the landlord served him a 10 day notice to end the tenancy. The tenant took the notice, and made no further attempt to pay his rent then, or thereafter. He spoke to someone at the Residential Tenancy Office, and was advised to file a claim. He filed an application for dispute resolution on November 5, 2013.

In his Application for Dispute Resolution, in the section entitled “Details for the Dispute” the tenant wrote:

Tried to pay rent which was refused because she wants me to leave. Was issued a notice saying I have not paid rent and I will be evicted if I don’t pay in 5 days. I

attempted to pay at that time and was refused. I tried again 2 days later and was also refused.

A witness for the tenant was texted by the tenant to call in to the hearing. According to the tenant, this witness was the person that had accompanied him to the landlord's home on November 1, 2013. The witness called in while the tenant was giving testimony, and agreed to call back in 10 minutes but failed to do so. Later in the hearing, the tenant texted the witness to call back in, and also tried to phone the witness to rejoin the hearing. The witness could no longer be reached, and the tenant agreed the hearing should close without hearing the witness's testimony.

The landlord provided a written statement and also testified at the hearing. She agrees that she went to the tenant's suite on October 31, and that the tenant started to give her some rent money. She gave him a letter that included the words "I hereby give you notice to vacate the suite by November 15, 2013. She asked the tenant to agree to end the tenancy, and sign the letter but the tenant refused. He became verbally abusive, and demanded back his cash, and ordered her to leave. At no time did he request a receipt for the cash rent. Later that night she began to get a series of increasingly abusive text messages from the tenant.

On November 1, the landlord spoke to someone at the Residential Tenancy Branch, and was advised to wait until November 2, and to issue a 10 day notice, if the tenant did not pay his rent. The tenant did not meet her at her door on November 1 with a witness, as he stated and he did not offer her a cheque for November's rent. On November 2, she handed the tenant a 10 day notice to end the tenancy, for non-payment of rent. The tenant took the document, and did not offer to pay the rent, and made no subsequent attempt to pay the rent.

The tenant sent various text messages to the landlord. Some of these are not relevant to the issue of the payment of rent. Some incorporate disturbingly racist or sexist language. Some do make reference to the issue of payment of rent. For example, on November 1, a text message from the tenant to the landlord included the following words:

You started shit with the wrong white boy. My whole family is filled with lawyers and government workers. Good luck. I will be here until next October unless you are going to let me live rent free until I find a place I like as much because you are illegally trying to evict me.

On November 3, text messages from the tenant to the landlord included the following words:

I will leave if you give me 5,000 dollars. Otherwise deal with it. Welcome to Canada. You are a cunt. You can not disconnect my internet and not provide me with cable since I'm paying for it. The residential tenancy branch is on my side. Your notice of eviction is not a legal document and means shit. I will give you a cheque today and the notice you gave me yesterday will mean shit.

The tone and content of subsequent text messages sent by the tenant use increasingly hostile and threatening language, but they make no reference to the issue of the payment of rent.

Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay his November rent on or before the first day of November, even though the landlord had given him what he terms an “illegal eviction notice”, on October 31, 2013.

The stories submitted by the parties are markedly different one from the other, and I am required to determine which of them is not being truthful. There are different ways to assess the credibility of a witness. One of those is the consistency of their words over time.

From the tenant's perspective, there is a problem with consistency. He testified at the hearing that he attempted to pay the rent twice, once in cash on October 31, and once by cheque on November 1, and that the landlord refused to accept the rent both times. He confirmed he never tried to pay the rent after that. In his application however, the tenant wrote:

Was issued a notice saying I have not paid rent and I will be evicted if I don't pay in 5 days. I attempted to pay at that time and was refused. I tried again 2 days later and was also refused.

The application therefore alleges the tenant tried to pay rent on November 2 and on November 4, while the tenant's testimony is inconsistent when he states that no attempt was made to pay the rent after November 1.

I also note that credibility can be negatively impacted through behaviour of a witness. While the tenant seemed forthright at the hearing, the very disturbing text messages left by the tenant certainly serve to weaken his credibility.

Finally, I note that the text message stating that the tenant will now live at the premises for free, lends support to a view that the tenant had no intention of paying any further rent to the landlord, once he learned that she wanted to end his tenancy.

Given these difficulties with the tenant's testimony, I prefer the landlord's testimony. I accept that the tenant began to pay rent in cash on October 31, but demanded the money back when he realized she wanted him to agree to leave in 15 days, and that the tenant made no further attempt to pay the rent.

It bears noting that the 10 day notice specifically advised the tenant to pay the rent in 5 days, or the tenancy would end in 10 days. It may be that the landlord wanted the tenancy to end, but the tenant has not proven on a balance of probabilities, that he made a genuine effort to pay the rent at any time, either before or after the 10 day notice was given. The rent was in fact never paid, and the notice is therefore found

effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to cancel the notice is dismissed.

No rent has been paid for either November or December, and the landlord will most certainly not be able to re-rent the premises prior to January 1. The landlord is therefore entitled to an award of \$1,500.00 representing her loss of rent for November and December, plus \$50.00 as recovery of the landlord's filing fee. The landlord is also entitled to retain the security deposit in partial satisfaction of the award.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$1,550.00, representing the rental arrears and the recovery of the filing fee. The security deposit totals \$375.00, and I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$1,175.00, be paid immediately.

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: December 17, 2013

Residential Tenancy Branch

