



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, OPR, MNR, MNSD, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This dispute was scheduled to be heard on September 20 and December 19, was adjourned on both dates and was eventually heard on this date January 15, 2014.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The tenancy started May 01, 2011. The current rent is \$820.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$395.00. The rental unit consists of an apartment located in an apartment building complex.

Both parties agreed that due to medical problems the tenant has episodes of erratic behaviour. The landlord stated that the tenant's behaviour has made female tenants uncomfortable and fearful for their safety. The landlord cited three tenants that moved out for this reason and were reluctant to document their concerns for fear of retaliation. The landlord also filed two letters of complaint from a long term tenant, regarding noise disturbances from the dispute rental unit. The letters are dated January 18 and August 03, 2013. On January 19, 2013 the landlord wrote a warning letter to the tenant regarding "*loud noises and verbal abuse of other tenants*".

The resident caretaker, who attended the hearing, testified about an incident that took place on September 02, 2013. The caretaker stated that he has lived in the building for 17 years and has managed the rental units for the past four years. The landlord's policy is to provide rent receipts to tenants upon their request. This tenant usually does not request receipts but did so for the month of September 2013.

The caretaker stated that on September 02, 2013, at around 10:30pm, the tenant knocked on his door and stated that he had come to pay rent. The caretaker had already prepared a receipt for the tenant as per his request prior to September 02. The caretaker went inside his apartment while the tenant waited at the front door. The tenant had an envelope in his hand. The caretaker testified that the tenant took the receipt from him and ran away without handing over the rent. The caretaker called the landlord to report the incident and because it was late at night, the landlord who is 80 plus years old, told the caretaker that he would deal with the issue the next day.

The caretaker stated that the tenant returned later that night and requested receipts for January and February 2013. The caretaker informed the tenant that he had not paid rent for September but had taken the receipt. The tenant replied that he had paid rent.

The tenant also testified about the incident on September 02. He provided two versions of events. He stated that the caretaker took the rent and then went into his apartment to get a receipt. The second version was that the caretaker went in to get the receipt and the exchange of rent and receipt took place simultaneously when the caretaker returned to the front door.

The next morning, on September 03, 2013, the landlord and caretaker visited the tenant and knocked on his door. The tenant stated that they opened his door while he was in bed. The tenant met the owner and caretaker and demanded to know the reason for the visit. The caretaker informed him that they were there to collect rent. The tenant testified that he told them that he had paid rent a couple of days ago. The tenant also filed copies of his bank account transactions that show he made withdrawals of cash on September 03. He explained that he withdrew the money on September 01, but because it was a long weekend, the transaction is dated September 03.

The police were called. The landlord stated that he served the tenant with notices to end tenancy for cause and for non payment of rent in the presence of the police. The tenant stated that he was served only with a notice to end tenancy for cause and was not served with a notice for non payment of rent. The landlord filed a copy of the notice for unpaid rent in the amount of \$820.00 and a completed proof of service form.

The notice for cause alleges that the tenant had significantly interfered with or unreasonable disturbed another occupant or the landlord.

Analysis

In order to support the notice to end tenancy, the landlord must prove the reasons for at least one of the notices to end tenancy. Even though the tenant stated that he did not receive a notice to end tenancy for nonpayment of rent, he agrees that he received a proof of service form. In a letter dated September 03, 2013 from the tenant to the arbitrator he refers to the 10 day notice and has attached a copy of the notice to his letter. The tenant also testified that he had received the landlord's evidence which contained the notice to end tenancy for nonpayment of rent.

Based on the testimony of the landlord and the caretaker, the documentary evidence and the landlord's application for an order of possession pursuant to the 10 day notice to end tenancy for nonpayment of rent, I find that, on September 03, 2013, the tenant was served with the 10 day notice to end tenancy for nonpayment of rent in the amount of \$820.00.

I now have to determine whether the tenant paid rent for September or is rent still owing. Based on the sworn testimony of both parties, I find:

1. The tenant provided two different versions when he testified about the events of the night of September 02, 2013.
2. The tenant testified that on September 03, he told the owner and caretaker that he had paid rent a couple of days ago which contradicted his earlier testimony that he had paid rent just the night before.
3. The tenant has never asked for a rent receipt except for the month in question.
4. The landlord has not provided receipts for rent for other months and has no reason to claim that the tenant did not pay rent for a month that he has a receipt for. If the landlord was interested in making a false claim he would have done so for a month that the tenant does not have a receipt for.
5. The tenant's bank statement shows that he withdrew money in amounts close to rent. Even if I accept that the tenant withdrew this money on September 01, even though the date of withdrawal on the bank statement is September 03, this does not prove that the tenant paid this money as rent, to the caretaker.

Based on the above reasons, I find that the tenant did not provide consistent testimony and therefore I prefer the testimony of the landlord. I find that on a balance of probabilities, it is more likely than not that the tenant failed to pay rent for September.

Therefore I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy for nonpayment of rent.

I find that the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

The landlord has established his entitlement to \$820.00 for unpaid rent for September 2013. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00. . I order that the landlord retain the security deposit of \$395.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$475.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession **effective two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$475.00**. The tenant's application is 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: January 21, 2014

Residential Tenancy Branch

