



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, OPR, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent and requested other relief concerning her security deposit. The landlord applied for an order for possession and a monetary award for unpaid rent as well as an order to retain the security deposit in partial satisfaction of the monetary claim.

Issue(s) to be Decided

Should the Notice to End Tenancy dated January 7, 2014 be cancelled?
Is the landlord entitled to a monetary award?
Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is a coach house on the landlord's residential property in Surrey. The tenancy began on February 1, 2013. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy. The rent was payable on the first of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy. The landlord testified that the tenant was often late paying rent and she proposed to the landlord that the rent be paid on the 15th of each month instead of the on the first. The landlord testified that she agreed to this proposal and thereafter accepted rent payments on the 15th of each month.

The tenant did not pay the rent when it was due on December 15th. On January 4, 2014 the landlord sent the tenant a text message. She said that she would come to the rental property between 6 to 6:30 P.M. to pick up the rent. The tenant replied saying that she would not be home and would leave cash in an envelope in mailbox. The landlord replied and requested that the tenant not leave cash in the mailbox, but instead leave

the rent in an envelope with the landlord's tenants at the house on the rental property. The landlord also contacted the tenants who occupied the house and asked them to check the mailbox and retrieve anything left in the mailbox. The house tenants assured the landlord that they would be home all day because they were packing to move and would keep a lookout for anything left in the mailbox. The tenant responded to the landlord's text message; she said that she had already left the payment in the mailbox.

No payment was found in the mailbox by the landlord or by her house tenants and on January 7, 2014 she personally served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The tenant applied to dispute the Notice to End Tenancy. The tenant said in support of her application to cancel the Notice to End Tenancy that had to borrow the money to make the rent payment and that she placed the rent payment in an envelope that she put in the mailbox attached to the outside of the house. The tenant said that the landlord had a practice of accepting cash payments for rent or for utilities that were left in the mailbox on the rental property. The landlord denied that she had such a practice or that she ever instructed her tenants to make payments in this fashion. In support of her position she referred to her messages to the tenant telling her not to leave cash in the mailbox.

The tenant was asked to provide specifics of any previous cash payments she had given to the landlord by leaving them in the mailbox. The tenant was unable to provide a previous time when she paid the landlord in this fashion. She referred to a written statement from another tenant of the landlord stating that the landlord had told her to make a payment and to: "just drop it in the mailbox".

Analysis

I accept the landlord's testimony that she did not instruct the tenant to make payments by leaving cash in the mailbox on the rental property. The evidence submitted by the landlord and by the tenant confirmed that the landlord told the tenant not to leave the payment in the mailbox, but instead to leave it with the occupants of the house. The evidence established that the landlord did not receive payment of rent for the period from December 15, 2013 to January 14, 2014. If the tenant did place cash in the mailbox on January 4, 2014, she did not do so at the request of the landlord and I find that the tenant, having chosen this method of delivery bears the risk of loss until the payment is actually received by the landlord. The payment was not received and I therefore find that there are not grounds upon which the Notice to End Tenancy for unpaid rent should be cancelled. The landlord is entitled to an order for possession and a monetary order for unpaid rent. At the hearing the tenant said that she is in the process of moving. She said that she intended to be moved by the end of February, but

she has been delayed due to a flood in her new accommodation. She said she expected to be fully moved by Tuesday, March 4, 2014.

Conclusion

The tenant's application to cancel the 10 day Notice to End Tenancy dated January 7, 2014 is dismissed without leave to reapply. The tenancy ended on the effective date of the Notice to End Tenancy, which was January 17, 2014 and I grant the landlord an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court. There is no basis for an award of any other relief to the tenant; her application for an order that the landlord comply with the *Residential Tenancy Act* is also dismissed.

The landlord is entitled to a monetary award for unpaid rent for the period up to February 28, 2014 in the total amount of \$1,125.00. The landlord is entitled to recover the \$50.00 filing fee for her application for a total award of \$1,175.00. I order that the landlord retain the \$375.00 security deposit that she holds, in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$800.00. This order may be registered in the Small Claims Court and enforced as an order of that court. The landlord has leave to apply for a further monetary order for loss of rental income or to claim for damage or cleaning costs incurred, if any.

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: February 27, 2014

Residential Tenancy Branch

