



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord testified he served a one month Notice to End Tenancy on the tenant in person on September 28, 2013. The tenant denies service of the one month Notice to End Tenancy.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on December 28, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession based on a one month Notice to End Tenancy dated September 28, 2013 and setting the end of tenancy for October 31, 2013?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties have been engaged in an ongoing dispute. On October 23, 2013 and arbitrator heard the tenant's application. The arbitrator rendered a decision on October 31, 2013 that included the following:

- The 10 day Notice to End Tenancy was cancelled.
- The arbitrator determined the tenancy agreement provided for rent of \$800 per month payable in advanced on the first day of each month.
- The arbitrator ordered that commencing November 1, 2013 that the rent be reduced by \$380 to \$420 per month until the landlord has completed certain repairs and replaced the tenant's washer and dryer.
- The arbitrator determined the tenants were entitled to compensation in the sum of \$850 that could be applied to future rent.

The landlord has not made the repairs or replaced the tenant's washer and dryer.

The tenant misread the decision and has paid the landlord rent in the sum of \$380 for the months of November, December and January. However, the tenant has the right to apply the monetary order against outstanding rent. As a result the tenant was entitled to apply \$40 a month for November, December and January in the sum of \$120 against the monetary order. In addition the tenant has the right to apply the \$420 owed for February against the monetary order leaving a balance of \$310. The \$310 can be applied to the rent for March.

Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy. In order to succeed the landlord must prove that he sufficiently served the Notice to End Tenancy on the Tenant. The landlord testified he served the one month Notice to End Tenancy on the Tenant on September 28, 2013 with a witness. The witness was not

present at the hearing and did not give any evidence. The tenant testified they were never served with a one month Notice to End Tenancy.

The arbitrator in the previous decision stated "The landlord gave undisputed testimony that he handed the tenants a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on September 28, 2013, accompanied by local police." The tenant disputes this finding. At the hearing the landlord testified the police were present in early September when he served the 10 day Notice to End Tenancy but they were not present on September 28, 2013. The parties in the previous hearing had not provided the arbitrator with a copy of the two Notices. However, the arbitrator refers to an end of tenancy date of the one month notice of October 28, 2013. The end of tenancy date in the copy of the Notice provided by the landlord in this hearing is October 31, 2013.

After considering all of the evidence I determined the landlord has failed to prove that he served the one month Notice to End Tenancy on the tenants. The tenant denies receiving it. The landlord had an opportunity to present the evidence of a witness but failed to do so. It is apparent from the landlord's testimony that the statement of the arbitrator in the previous decision that the landlord was accompanied by police when he served the two month Notice is not accurate. In any event that determination was not necessary for the decision of the previous arbitration as that arbitration did not deal with an application to cancel the one month Notice. Given the degree of animosity between the parties I determined it would be not appropriate to rely on the sole testimony of the landlord without corroboration. Further, the landlord delayed in filing the within application. He has continued to accept the rent paid by the tenant to the landlord without condition and in so doing has reinstated the tenancy.

The landlord to serve a new one month Notice to End Tenancy on the tenant and the matter could be determined on its merits.

As a result I dismissed the landlord's application for an Order for Possession and an order to recover the cost of the filing fee.

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 06, 2014

Residential Tenancy Branch

