



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR

Introduction

This dispute resolution process originated upon the landlord's application for a direct request proceeding pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent.

The landlord's application was successful, as the original Arbitrator awarded the landlord a monetary order for unpaid rent for November 2013 in the amount of \$1300 and an order of possession for the rental unit due to unpaid rent in a Decision dated December 13, 2013. The December 13, 2013, was taken against only tenant as was the only listed tenant in the landlord's original application.

On December 23, 2013, tenant filed an application for review consideration of the Decision and orders of November 13, 2013, which resulted in a favourable decision.

The reviewing Arbitrator, in a Review Consideration Decision dated January 2, 2014, suspended the original Arbitrator's Decision and orders of December 13, 2013, and ordered a review hearing. The tenant's application for review consideration alleged three grounds upon which he based his application, that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control, that he has new and relevant evidence that was not available at the time of the original hearing and that he has evidence that the Decision of December 13, 2013, was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*.

The reviewing Arbitrator did not grant the tenant a review hearing based upon any of the three allowed grounds, but rather on the basis of the Dispute Resolution Rules of Procedure (Rules).

The reviewing Arbitrator decided that tenant was not served with the notice of the direct request proceeding or the landlord's evidence, although he was also a listed tenant, according to the reviewing Arbitrator.

At this review hearing, tenant and the landlord attended. Tenant failed to attend.

The hearing process was explained to the parties, following which they provided affirmed testimony and referred to relevant documentary evidence supplied in advance of the hearing.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-Both parties claimed that they had not received the other's documentary evidence. The documentary evidence of both parties was extensive and the tenant said the evidence was delivered to the landlord and placed between his front door and a screen door by his tutor.

The landlord submitted that he sent his documentary evidence to tenant via registered mail as she is the only tenant who signed the tenancy agreement, although tenant's name was listed in the tenancy agreement.

I determined that the issues could be decided upon despite both parties denying receipt of the other's evidence, with the proviso that I would withhold my final Decision if it appeared that I would require both parties to re-serve their evidence to the other.

Issue(s) to be Decided

1. Will the Decision and orders of December 13, 2013, be confirmed, varied, or set aside?

Background and Evidence

Due to the nature of the original application for dispute resolution, which was the landlord's application for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), and to the fact a review hearing has been granted, the landlord proceeded first in this hearing to explain and support his application.

The landlord testified that he placed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the mailbox attached to the rental unit on November 26, 2013. The Notice listed unpaid rent of \$1300, which was due on November 1, 2013. Total rent due under the tenancy agreement is \$2200, and the landlord explained that he received a cash payment of \$200 and a bank draft of \$700 for the November rent.

The landlord submitted that since he issued the Notice, he has not received any further rent payments, and that the tenant owes the full amount of rent for December 2013, and January and February 2014.

It was on the basis of this undisputed 10 Day Notice that the landlord applied for, and received an order of possession for the rental unit and a monetary order for unpaid rent for November 2013 through his application under the direct request proceeding, listing only as the tenant/respondent.

In response, the tenant submitted that, as noted in his application for review consideration, he should have been listed as a co-respondent on the landlord's application for the direct request proceeding and served with the original 10 Day Notice, as well as the notice of the direct request proceeding. The tenant presented that he was a tenant in the matter of this tenancy, as shown by his evidence, a tenancy agreement listing him and , who is his mother, as tenants, and signed by him, and the landlord.

The tenant submitted neither he nor his mother received the landlord's original 10 Day Notice, as his mother is not living at the rental unit due to medical issues, and due to the fact he was out of town at the time. Additionally, the tenant submitted that the landlord did not serve a 10 Day Notice, as the Notice was not in his mail box. In further explanation, the tenant submitted that in his extended absences, he had someone attend the rental unit to look after his mail box and that this person did not receive it. The tenant pointed to his photo, which showed junk mail stuffed in and spilling out of the box.

The tenant further submitted that luckily he did manage to pay the balance of the rent for November of \$1300 when he returned from out-of-town on December 4, 2013. The tenant stated that his tutor dropped off this rent cheque to the landlord. The tenant submitted a copy of the cheque and acknowledged that the cheque has not been cashed by the landlord.

In response to my question, the tenant stated that his tutor was not available to provide testimony.

The tenant further submitted that he has made further payments of rent through email transfers, but that the landlord has refused all payments.

The tenant submitted that he has implored the landlord to send any documents to him by registered mail in his name, as he cannot collect mail sent in his mother's name; despite this, according to the tenant, the landlord refuses.

The landlord, in response to the tenant's submissions, stated that he did not receive the rent cheque of \$1300, or any other rent payments as claimed by the tenant.

The landlord said that he served only tenant with the 10 Day Notice and his notice and application for the direct request proceeding, as she was the only tenant who signed the tenancy agreement, although 's name was listed. The landlord submitted a copy of that tenancy agreement, which I note shows that only signed the document.

In response to my question, the landlord stated that did not inform him that she would not be living in the rental unit for extended times and that he was unaware that she was not there when he served the 10 Day Notice or the notice of the direct request proceeding.

Analysis

I have reviewed and considered the extensive amount of documentary evidence and the oral evidence taken at this hearing. I have determined that neither party was prejudiced by allegedly not having received the other's documentary evidence.

As to the parties' testimony, I found that the tenant lacked credibility. I arrived at this conclusion as the tenant testified that he had not received the landlord's extensive documentary evidence, received by the Residential Tenancy Branch ("RTB") for the hearing file on February 11, 2014; yet, the tenant submitted documentary evidence, received by the RTB on February 18, 2014, which references and responses to the landlord's documentary evidence regarding the witnesses the landlord intended on using.

The tenant also claimed that he had someone attend the rental unit in his absence to collect his mail and look after the house, and this person did not receive the 10 Day Notice; yet the photo of the mailbox supplied by the tenant shows that there was very

little likelihood that anyone collected the mail, due to the contents overflowing and spilling out.

As to the tenant's claim that he was entitled to, and the landlord was required to, serve him with the documents of this tenancy, in this case the 10 Day Notice and the application for direct request proceeding, I find this argument lacks merit.

I accept that the landlord possessed a tenancy agreement signed by him and only , not , that he did not have the tenancy agreement showing original signatures, which included tenant , and therefore I find that he properly served only with the 10 Day Notice and the notice of the direct request proceeding.

Even had this not been the case, the two listed tenants were co-tenants of the rental unit and are therefore jointly and severally liable for meeting the requirements of the tenancy agreement and obligations for the landlord's losses.

The law places the responsibility on the tenants to apportion among themselves the amount owing to the landlord. Furthermore, as co-tenants they are jointly and severally liable for debts and damages relating to the tenancy. This means the landlord may recover the full amount of money due from all, or any one of the tenants.

Therefore the landlord was not compelled to serve both parties with the notice of direct request proceeding as both are jointly liable, if that is the case, and the only restriction in not serving all tenants is that only the tenant being served will be liable, if at all, if the landlord's application was successful.

I additionally accept the landlord's evidence that he served the 10 Day Notice by placing the same in the tenants' mailbox, as corroborated by a witness statement, and I therefore find that the tenant , or even both tenants, were both properly served the 10 Day Notice.

I also accept the landlord's testimony that he was not informed that would not be living in the rental unit, and was not present at this hearing to provide her own testimony.

I also accept the landlord's evidence that he has not received any rent from the tenants since the issuance of the Notice, as I have found that the tenant lacked credibility and proof that the cheque he wrote for \$1300 for the balance of the rent for November 2013, was ever received by the landlord.

Due to the above, I therefore find the landlord properly served the responsible tenant, , with the 10 day Notice, on November 26, 2013, in her mailbox, as stated by the landlord, that rent of \$1300 was owed when the Notice was issued, and that the tenant did not pay the outstanding rent within 5 days or at all.

On this basis, I confirm and reinstate the original Decision, monetary order for \$1300, and the order of possession for the rental unit, all dated December 13, 2013, pursuant to section 82(3) of the Act, and they remain valid and enforceable.

I advise that I have only dealt with the matters of the landlord's original application, and have not dealt with any other issues, such as further unpaid rent owed, if any.

Conclusion

The Decision, order of possession for the rental unit, and the monetary order for \$1300 in favour of the landlord issued December 13, 2013, are confirmed.

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 19, 2014

Residential Tenancy Branch

