



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNDC, OLC, RP, RPP, RR

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy;
2. For a monetary order for compensation for damage or loss under the Act;
3. To have the landlord comply with the Act
4. To have the landlord provide services or facility agreed upon;
5. Return the tenant's personal property; and
6. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the landlord's request for an order of possession and a monetary order for unpaid rent. The balance of the tenant's application is dismissed, with leave to reapply.

At the outset of the hearing the landlord stated they are not proceeding with the notice to end tenancy, issued on January 4, 2014, and that the only notice to end tenancy required to be heard in the notice issued on December 6, 2013.

Issues to be Decided

Should the notice to end tenancy be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on February 1, 2013. Rent in the amount of \$875.00 was payable on the first of each month.

The landlord testified that the tenant failed to pay rent for December 2013, and was issued with a 10 Day Notice to End Tenancy.

The landlord testified the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on December 6, 2013, which was witnessed. Filed in evidence is a copy of the notice.

The Witness for the landlord testified that she served the tenant with a document on December 6, 2013, which she noticed it was called a 10 Day Notice to End Tenancy for Unpaid Rent. The witness stated she did not look at the contents of the document.

The tenant testified the first time she saw the notice was in the landlord's evidence package. The tenant stated what she received on January 4, 2014, were proof of service documents. Filed in evidence are copies of the proof of service documents.

The tenant testified that the landlord is trying to evict her for any reason that they can find. The tenant stated she paid rent on December 2, 2013, in the same manner as she always did and that was by sliding the rent under the laundry room door which is secured. The tenant stated the landlord always refused to provide her with a receipt and that is why she started to pay rent in January 2014, by direct deposit.

The tenant testified that there was no mention in the letter of December 5, 2013, indicated that she had failed to pay rent, the landlord was simply telling her that they were not extending the lease because both parties are not satisfied with each other.

The tenant testified she has always paid rent in cash and in support of her position are Bank Account History Financial Enquiry Reports. The tenant stated the records show each month that she has consistently withdraw money from her account, including December 2, 2013, which she paid cash for her rent.

The landlord's deny receiving any cash from the tenant on December 2, 2013. The landlord stated they never provided rent receipts, but the tenant made them initial a document the tenant provided each time they received rent.

The tenant responded that the landlord is just making up a story.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the evidence of the landlord was the tenant was served with a notice to end tenancy for non payment of rent on December 6, 2013, which was witnessed. The tenant denied receiving the notice prior to the landlord filing there evidence. The evidence of the tenant was that she received the proof of service copy in January 2014.

Even If I accept the landlord evidence that the tenant was served with the notice, issued on December 6, 2014. The notice the landlord has submitted as evidence does not comply with Section 52 of the Act, as the effective vacancy date has been left blank. As a result, of that omission the notice is not valid and has no force or effect. Therefore, I grant the tenant's application to cancel the notice to end tenancy. The tenancy will continue until legally ended in accordance with the Act.

The evidence of the landlord was the tenant failed to pay rent. The evidence of the tenant was rent was paid and in support of her position is a bank account history report.

In this case both parties have provided a different version of events; however, I accept the evidence of the tenant for the following reasons, she has provided evidence that the money was withdrawn from her bank account on December 2, 2013, the landlord has not provided rent receipts for cash during the tenancy as required by the Act.

Further, the landlord provided the tenant a written notice on December 5, 2013, to inform the tenant that they would not be extending her lease. I find if rent was not paid at that time, it would have been reasonable to indicate that in the letter of December 5, 2013. I find the landlord has failed to prove rent was not paid for December 2013. Therefore, I dismiss their claim to for compensation for unpaid rent.

Conclusion

The landlord's application is dismissed.

The tenant's application to cancel the notice to end tenancy is granted. The tenancy will continue until legally ended in accordance with the Act. The balance of the tenant's application is dismissed with leave to reapply.

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