



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tiffany Gardens Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, MT

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 day notice to end tenancy for unpaid rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant made a 5 page evidence submission. The landlord did not make a written submission. The landlord confirmed receipt of the tenants' hearing package some time ago and evidence at least a week prior to the hearing.

The tenant applied requesting more time to apply to cancel the Notice. The tenant applied within the required 5 day time-frame.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on June 3, 2014 be cancelled?

Background and Evidence

The tenancy commenced on March 1, 2010. Rent is \$790.00 per month, due on the 1st day of each month.

There was no dispute that the tenant received the 10 day Notice to end tenancy for unpaid rent which the landlord slid under the tenant's door on June 3, 2014.

There was agreement that at times during this tenancy rent has been paid by cash. The tenant said she has never received a receipt for cash payments made. The landlord said that the tenant has only paid by cash once and that if rent is paid by cash a receipt will be issued. Later in the hearing the landlord said that perhaps more than 1 cash payment has been made. Over the past 3 months the landlord has been telling tenants they should not make payments by cash, although if they do a receipt will be issued.

There was no dispute that the tenant owed \$395.00 April 2014 rent and that May rent was late. On May 5, 2014 the tenant made a cash rent payment by placing the money in the landlord's mail slot. This payment brought her up to date and covered the \$25.00 late fee for April and May 2014; with the exception of \$10.00. The landlord was aware this payment was to be made.

The tenant supplied a print-out of her bank account statement which showed her account had been frozen. On May 5, 2014 the tenant made a withdrawal in the sum of \$2,200.00 and on May 6, 2014 she made another withdrawal of \$1,000.00.

The tenant said she is a student and single parent, so she decided to make her June and July rent payment and withdrew additional funds on May 6, 2014 so she could pay the next 2 month's rent. The tenant wanted to avoid any more stress in relation to rent payments due. On May 6, 2014 the tenant placed an additional \$1,590.00 in the landlord's mail slot to cover June and July 2014 rent and the \$10.00 late fee that was outstanding.

The landlord said they did not receive any payment after May 5, 2014. On June 3, 2014 the landlord slid the Notice ending tenancy under the tenant's door. When the tenant saw the Notice she said she panicked and immediately called and spoke with the property manager. The property manager confirmed that he received the call and that the tenant was "visibly upset."

The property manager then contacted the landlord, who said that he had not received any payment after May 5, 2014. The landlord said a receipt would have been issued and placed in the tenant's mail slot. The tenant again said she has never received a receipt for any cash payments made during the tenancy and that she did not receive a receipt for the May 5, 2014 payment made.

The tenant provided an email from M.M. as evidence that M.M. saw the tenant make the May 5, 2014 payment. A statement signed by S.M., a past tenant of the building, indicated that cash payments were accepted and that when visiting the tenant she was told the tenant had placed a large amount of money in an envelope marked "for management." The tenant told the witness that she had also made a cash payment the day before.

Analysis

Residential Tenancy Branch Rules of Procedure indicate that an applicant will make submissions first; followed by the respondent. The exception to this is when a tenant applies to cancel a Notice ending tenancy.

The landlord has the burden of proving, to a degree that is believable; the tenant has failed to pay the rent. I must be satisfied, on the balance of probabilities that the landlord has established June rent was not paid.

My assessment and finding is based on the evidence supplied by each party; through oral testimony and the tenant's written submission. I have considered the evidence given by each party and weighed the credibility and likelihood of each submission.

From the evidence before me I find that the landlord has not proven that receipts have been issued for cash rent payments made during this tenancy. If the landlord had issued receipts and given them to the tenant it would have been reasonable for the landlord to provide copies of receipts, in response to the tenant's application. The tenant's application served to the landlord indicated she had placed her payment for June rent in the mail slot. Copies of past receipts would have supported the landlord's submission, by showing a pattern of recording cash payments and receipts issued, as required by the Act.

I found the tenant's testimony consistent and detailed. She provided bank statement evidence of withdrawals, admitted she had been late with April and May 2014 rent and that after the May 5, 2014 payment was made that she would pay June and July in advance in order to avoid further problems. The tenant provided detail, such as the payment of the final \$10.00 owed for late fees; a point I find lent even more credibility to her testimony.

On the other hand, despite having been served notice of this hearing well in advance, the landlord provided no evidence of any notice given to tenants that they should not make cash payments. In fact, the landlord accepted a cash payment made on May 5, 2014 and did not supply evidence of a receipt issued and given to the tenant.

The landlord also confirmed that when the tenant received the Notice ending tenancy she immediately called and was distraught. That is behaviour one could expect when a person has made a payment and been told it was not received and the tenancy must end. This testimony was spontaneous and I find it supports the tenants submission that the rent had been paid and that she was shocked when told it had not been received.

If the tenant had been given a receipt for the May 5, 2014 cash payment it is reasonable she would have then expected a receipt for the May 6, 2014 payment. In the absence of receipts the tenant was unaware that her May 6, 2014 was not acknowledged by the landlord. This caused me to place more weight on the tenant's testimony.

I gave the email statement no weight as the source cannot be verified. I did consider the signed statement by S.M. and found it compelling, given the lack of embellishment.

I find that the landlord has failed to prove, on the balance or probabilities, that rent was not paid on May 6, 2014 in the sums indicated by the tenant. I find that the truth of the story most likely resides with the tenant's version of events.

Therefore, I find that the Notice ending tenancy for unpaid rent issued on June 3, 2014 is of no force and effect.

This leads me to find, pursuant to section 62(3) of the Act and on the balance of probabilities, that the tenant has paid June and July 2014 rent plus the balance of late fees owed up until June 2014.

Therefore, this tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Notice ending tenancy for unpaid rent issued on June 3, 2014 is cancelled.

This decision is final and binding and 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: July 23, 2014

Residential Tenancy Branch

