



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, ER, RR, PSF, LRE, SS, OPR, MNR, MNSD, FF

Introduction

In the first application the tenant seeks to cancel a ten day Notice to End Tenancy dated and served September 2, 2014. She also seeks a variety of relief relating to the state of the premises, alleged verbal agreements with the landlord for repairs and improvements and regarding restricting landlord access.

In the second application, the landlord seeks an order of possession pursuant to the Notice and to recover unpaid rent.

The tenants' claims regarding the Notice, the condition of the premises and the landlord access are unrelated to each other and so appear to be non-compliant with Rule 2.3 of the Residential Tenancy Branch Rules of Procedure. At this hearing the claims were prioritized and there was only sufficient time to deal with the most urgent issue of whether or not the Notice was a valid Notice; whether or not this tenancy continues.

Additionally, it may be that the parties can resolve some of the other issues once it is known that the tenancy is continuing or not.

The remainder of the claims were dismissed with leave to re-apply.

Issue(s) to be Decided

Is the ten day Notice to End Tenancy a valid Notice?

Background and Evidence

The rental unit is a three bedroom house on a city lot. The tenancy formally started on September 1, 2014. The rent is \$1600.00 per month.

The tenants were given early possession in mid-August. There was no charge for this early possession. It is possible there was an agreement for the tenants to clean or make improvements to the premises in return for the early possession.

The tenants paid the landlord's representative, her father Mr. B.B. \$800.00 in cash on August 6th. The tenant Ms. K.R. prepared a receipt and Mr. B.B. signed it. The receipt says the money is for "half months deposit for Rent of September 1st 2014." Mr. B.B. did not take a copy of the receipt.

The attending tenant Ms. K.R. says this receipt was an advance of rent. The landlord's representative, her mother Ms. H.B. says the quoted phrase was added by the tenant after Mr. B.B. signed the receipt and the payment was really payment of a security deposit.

Mr. B.B. did not attend the hearing. He was out of the country on a family emergency.

On August 31, 2014 the tenants paid a further \$800.00 in cash. Again the tenant Ms. K.R. prepared a receipt which Mr. B.B. signed. The receipt indicates it is for "Balance of the Rent for the month of September 2014." At hearing Ms. H.B. disputed the authenticity of that notation as well.

At the August 31 meeting Mr. B.B. and Ms. H.B. who was also there, presented the tenants with a standard form tenancy agreement. It indicates that an \$800.00 security deposit is required to be paid by August 20th. No such payment had been made.

The tenants claimed to want to show the tenancy agreement to their lawyer before signing. The document has not since been signed or returned by the tenants.

On September 3rd the ten day Notice in question was issued.

Analysis

Determination of what the \$800.00 August 6th payment was for rests on whom to believe. In that regard I have the direct testimony of Ms. K.R. who drafted the document and the second hand evidence of Mr. B.B.. A person alleging that a document he has signed has been altered has the burden of proving it. In this instance, having regard to the evidence presented at hearing, the landlord has not proved on a balance of probabilities that the August 6th receipt was altered after he signed it.

As a result, I find that the \$800.00 cash payment made August 6th was an advance of rent for September 2014 rent. The second \$800.00 payment resulted in the September rent having been paid in full. The ten day Notice was therefore in error to demand an additional \$800.00 for September rent. I hereby cancel the Notice.

The October rent has not been paid. Since there is an issue with direct communication between the parties, it was agreed at hearing that the tenant would have the \$1600.00 October rent in the hands of her assistant Ms. S.S. by 4:00 p.m. on Wednesday, October 29th and at that time the landlord's representative Ms. H.B. can attend at Ms. S.S.'s office, the address of which was given at hearing, and collect the money. Ms. H.B. was advised to bring her own receipt book.

Conclusion

The tenants' application regard cancellation of the Notice is allowed. The ten day Notice to End Tenancy dated September 2, 2014 is cancelled. The balance of the tenants' claim is dismissed with leave to re-apply. No filing fee was paid.

The landlord's applicant for an order of possession is dismissed. She is free to re-apply for a monetary order if the October or any subsequent rent is not paid.

This decision was rendered orally at hearing.

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: October 28, 2014

Residential Tenancy Branch

