



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy received by the tenant Ms. H. on December 3, 2014 and for a monetary award for unpaid December rent and loss of January rental income.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the relief granted.

Background and Evidence

The rental unit is a two bedroom apartment in a 34 unit conventional apartment building.

The tenancy started July 1, 2013. The current monthly rent is \$894.25. The landlord holds a \$437.50 security deposit.

The December 2014 rent was not paid on December 1st. The landlord issued the ten day Notice in question. The rent was not paid within the five day period following receipt of that Notice.

The tenant Ms. H. attended on the landlord's representative Mr. S. at the landlord's office on either December 16 or 18 where she tendered the balance of December rent and an advance on January 2015 rent. The money, in the form of a debit payment, was accepted by the landlord's representative without qualification.

Mr. S. later prepared a receipt or receipts noting the money as "for use and occupation" and posted the receipt(s) on the rental unit door.

The balance of January 2015 rent was paid January 6th.

Analysis

According to the tenant Ms. H., the respondent Mr. McA. has never lived in the apartment. The landlord's representative agrees Mr. McA. did not sign the tenancy agreement. I find that Mr. McA. is not a tenant of this rental unit and I dismiss this application against him.

Section 46 of the *Residential Tenancy Act* (the "Act") provides

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The tenant failed to pay the rent money or apply to cancel the Notice within the five day period permitted by s. 46 (4), above. As a result, she is “conclusively presumed” to have accepted the end of the tenancy and I find that this tenancy ended on December 14, 2014.

However, after that, on December 16th or 18th, the tenant tendered the balance of unpaid December rent. That money was tendered as rent. By Mr. S.’s act of unqualified acceptance of that money he accepted it as rent and not as something else, like payment for use and occupation of the premises. The landlord could not thereafter unilaterally change the essence of that bargain by issuing a receipt indicating the money was received for something else..

I find that although the tenancy ended, it was reinstated by the landlord’s representative’s acceptance of rent.

I dismiss the landlord’s request for an order of possession.

The December and January rent has been paid in full. The landlord is owed a \$25.00 late fee for December, as claimed, plus the \$50.00 filing fee. There will be a monetary order against the tenant Ms. H. in that amount.

Conclusion

The application for an order of possession is dismissed. The landlord will have a monetary order against the tenant Ms. H. in the amount of \$75.00.

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: January 16, 2015

Residential Tenancy Branch

