



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Notice to End Tenancy for Non-Payment of Rent, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenant's application for an order setting the 10 Day Notice. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy dated February 5, 2015, valid?
- If so, upon what terms should the order of possession be granted?
- If so, in what amount should the monetary order be granted?

Background and Evidence

This month-to-month tenancy commenced January 1, 2015. The written tenancy agreement is dated December 31, 2015. The tenancy agreement provides for monthly rent in the amount of \$650.00 to be paid on the first day of the month. It also provides for payment of a security deposit of \$325.00.

The landlord testified that the tenant paid him the security deposit of \$325.00 in cash on December 31, 2014. The tenant testified that he gave the landlord \$975.00 in cash to the landlord in front of the landlord's wife and other members of the family.

He did not give a receipt for the payment made.

The tenant testified that they talked about receipts and the landlord said something about buying a receipt book. The landlord testified that when they talked about receipts the tenant said "I'm an honest guy, I don't need receipts" so he did not give a receipt for the security deposit. He also testified that if the payment had been for \$975.00 he would have given a receipt.

The landlord testified that on January 1 the tenant said he had some other expenses to cover so he could not pay the January rent on that date. He let the tenant move in anyways because he had paid the security deposit.

The landlord testified that the tenant refused to pay the rent because he wanted a privacy wall built in the suite. He tried to give the tenant a 10 Day Notice to End Tenancy in person but the tenant refused to accept it. Acting on advice received from the Residential Tenancy Branch he posted the notice at the rental unit on February 5. The notice claims that neither the January nor February rent had been paid.

The tenant testified that he paid the landlord the February rent in cash on February 1.

The tenant's girlfriend testified that she was sitting on a couch in one room of the suite but could see into the rest of the suite. The tenant heard the landlord come down the stairs. The tenant grabbed his cash and met the landlord. She testified that she hear but not see the landlord but she could see some hands. She saw that the tenant had a wad of cash in his hands and that he handed the cash to someone. She heard the tenant say "\$650.00?" and the landlord answer yes.

The landlord testified that he did go downstairs on February 1 but he did not go near the rental unit. He also testified that he he did not see the witness until a conversation that occurred outside a few days later. He stated that he did not receive any rent on February 1.

The tenant testified that, acting upon advise received, he had not paid the rent for March.

Analysis

On an application such as this the onus is on the landlord to prove, on a balance of probabilities, that the tenant did not pay the rent and that rent is owed.

When there is conflicting oral testimony by the parties arbitrators commonly look to the documentary evidence to see whether it supports the oral testimony of either party.

In this case, the dispute is whether cash payments were made by the tenant to the landlord. Both parties acknowledge that one cash payment was made, namely the security deposit. Both parties acknowledge that a receipt was not given for this payment.

Section 26(2) of the *Residential Tenancy Act* requires landlords to provide a tenant with a receipt for rent paid in cash. Although it does not specifically require a landlord to provide a receipt for a security deposit or pet damage deposit paid in cash, if the landlord had provided the tenant with a receipt for one cash payment made it would have provided some evidence that his practise is to provide receipts for all cash payments made. This may have helped tip the balance of probabilities in the landlord's favour.

As it is, the only evidence is the conflicting oral testimony of the landlord and the tenant. There was nothing in their testimony that would allow me to decide who was telling the truth and who was not. The witness provided her evidence in a clear and careful manner but the helpfulness of her testimony is limited by the fact that she is not a disinterested observer.

The landlord has not tipped the balance of probabilities in his favour. Accordingly, I cannot find that the tenant did not pay the January and February rents and I must find that the 10 Day Notice to End Tenancy dated February 5, 2015 is not valid.

As the tenant was successful on his application he is entitled to reimbursement from the landlord of the \$50.00 fee he paid to file it. Pursuant to section 72 this amount may be deducted from the March rent.

Conclusion

The 10 Day Notice to End Tenancy dated February 5, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the Residential Tenancy Act. As was explained to the parties in the hearing this means that the tenant is responsible for the rent and if he wishes to end the tenancy, he must give notice as required by the legislation.

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: March 06, 2015

Residential Tenancy Branch

