



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHELSEA MANOR APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0943 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent is the resident manager for the building.

The agent testified that he personally served the tenant with the dispute resolution package on 12 February 2015. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Preliminary Issue – Withdrawal of MNR and MNSD

At the hearing the agent asked to amend the landlord's application to withdraw the landlord's request for a monetary order for unpaid rent and authorization to retain the tenant's security deposit in satisfaction of the monetary order. The agent testified that the tenant had paid all outstanding rent arrears to the landlord and that the tenant's account was current.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. I allowed this amendment as there is obviously no prejudice to the tenant in doing so.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord did not supply any documentary evidence in support of its application. All evidence was received by way of the agent's testimony.

The landlord and tenant entered into a written tenancy agreement on 10 December 2014. This tenancy began 1 January 2015. Monthly rent of \$850.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit in the amount of \$425.00, which was collected 10 December 2014.

The agent testified that he personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 February 2015. The agent testified that the 10 Day Notice was dated 2 February 2015. The 10 Day Notice set out that the tenant had failed to pay \$850.00 in rent that was due 1 February 2015. The 10 Day Notice set out that the tenant had five days to pay the rent arrears or to vacate the rental unit by 13 February 2015.

The agent testified that the tenant paid her outstanding rent on 19 February 2015 by way of a money order. The agent testified that he issued the tenant a receipt for "use and occupancy only". The agent testified that the tenant is current on her rent.

Analysis

In an application for an order of possession for unpaid rent, the landlord bears the onus of proving, on a balance of probabilities, that:

1. the tenant owed rent pursuant to a tenancy agreement;
2. the tenant failed to pay rent when it was due;
3. the landlord properly completed and served a 10 Day Notice to the tenant;
4. the tenant failed to pay the outstanding rent within the five days provided for under subsection 46(4); and
5. the landlord has not reinstated the tenancy.

In this case, the landlord did not supply any documentary evidence. All evidence was provided by way of testimony from the agent.

While I do not disbelieve the agent's testimony, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: The best evidence available should be provided.

On the basis of the reduced weight given to oral evidence reading in the details of documentary evidence, I find that the landlord has failed to prove, on a balance of probabilities that:

1. the tenant owed rent pursuant to a tenancy agreement;
2. the tenant failed to pay rent when it was due;
3. the landlord properly completed and served a 10 Day Notice to the tenant;
4. the tenant failed to pay the outstanding rent within the five days provided for under subsection 46(4); and
5. the landlord has not reinstated the tenancy.

As the landlord has been unsuccessful, it is not entitled to recover the filing fee.

Conclusion

The landlord's application for a monetary order for unpaid rent and authorization to retain the tenant's security deposit in satisfaction of the monetary order is withdrawn. I dismiss the landlord's claim without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 09, 2015

Residential Tenancy Branch