



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession or the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started in April 2014. Rent of \$1,000.00 is payable monthly on the first day of each month. No security deposit was collected by the Landlord. On March 10, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the

door. The Notice notes that rent of \$1,000.00 due as of March 1, 2014 is unpaid. The Tenant did not pay rent for April 2015.

The Landlord states that the Tenant failed to pay rent for March 2015. The Landlord provided a copy of a banking document setting out rental deposits. The Tenant states that for the past couple of months he has been paying rent on the 20th of each month for the next month as this when the Tenant receives its child tax credit. The Tenant states that rent for March 2015 was paid was paid on February 20, 2015 as noted in the Landlord's evidence. The Tenant states that the Landlord's deposit record does not include a cash payment made on December 20, 2014 directly to the Landlord at the Landlord's residence. The Tenant states that no receipt was provided for this cash payment and that Landlord did not provide a receipt for one other previous cash payment of \$200.00 made in September 2014. The Tenant describes the details of the payment made in December 2014.

The Landlord states that the unit has been for sale since the outset of the tenancy and that the real estate agent told the Landlord that it could not sell in the current state. The Landlord states that the dog is "shitting" all over the house and the Tenant has been burning garbage and mattresses in the yards resulting in complaints from the neighbour. The Tenant denies that there is problem with the unit or his behavior. The Tenant states that April 2015 rent is available and will be paid immediately. The Tenant states that this amount was withheld for repairs not made but that the Tenant just learned that he could not withhold rent for this reason.

Analysis

There is no provision under the Act that allows the landlord to obtain an order of possession where the notice to end tenancy is not valid. Where a landlord's notice to end tenancy is disputed the burden of proof lies with the landlord. The Tenant's evidence of rent payment in December 2014 was delivered as vigorously as the Landlord's evidence that no such rent was paid. However, given that the Landlord has the burden of proof, did not provide any evidence of an accounting system for the

collection and payment of rent, has articulated several other reasons for wanting to end the tenancy and did not dispute the failure to provide a rent receipt for a previous cash payment, I tend to prefer the Tenant's evidence and therefore find that the Landlord has failed to provide sufficient evidence to establish on a balance of probabilities that the Tenant failed to pay March 2015 rent. As a result I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. I caution the Tenant to pay April 2015 rent forthwith. As the Notice is not valid I find that the Landlord is not entitled to an order of possession and I dismiss the Landlord's claim for an order of possession and a monetary order in relation to March 2015 rent. The Landlord has leave to reapply in relation to the payment of April 2015 rent.

Conclusion

The Notice is cancelled and of no effect. The Landlord's application is dismissed.

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: April 22, 2015

Residential Tenancy Branch

