



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In the first application, by filing date, the tenant seeks to cancel a ten day Notice to End Tenancy given for unpaid rent and dated March 11, 2015.

In the second application the landlord seeks an order of possession pursuant to that Notice and a monetary award for unpaid March rent and loss of April rent.

At hearing the landlord withdrew his application for an order of possession and limited his monetary claim to March rent.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that the tenant paid the March rent.

Background and Evidence

The rental unit is the upper, three bedroom portion of a house. There are two lower rental suites.

The tenancy started in March 2011. The monthly rent is \$1500.00, due on the first of each month. The landlord holds a \$700.00 security deposit. There is no written tenancy agreement.

The tenant lives in the premises with her three children, one of whom, her twenty five year old son Mr. A.M., gave evidence at this hearing.

The tenant testifies that it was her habit to collect \$1000.00 of the \$1500.00 monthly rent from her son Mr. A.M. and the other \$500.00 from her daughter, all in cash.

It appears that most often, the landlord's wife Ms. B.B. came by for the rent. It also appears that it was the landlord and Ms. B.B.'s habit to provide a receipt for the cash rent at the time of collection. It was the tenant's habit to have the cash rent in the envelope on a particular table in anticipation of the landlord's arrival and that whoever was home at the time would pass it to the landlord or Ms. B.B. when either came by. Sometimes the rent was passed to the landlord through a window to convenience the tenant, who is physically disabled.

The tenant testifies that on March 3, 2015 at 8:35 a.m., the landlord's wife Ms. B.B. came to the door to collect the rent. The money, composed of fifteen \$100.00 bills as usual, had been counted out by the tenant. She says she gave Ms. B.B. the money. She says Ms. B.B. did not count the money and that she never did, trusting the tenant. She says Ms. B.B. did not give her a receipt.

The tenant's son Mr. A.M. testified that he had gone to the bank prior to March 3rd and had withdrawn his \$1000.00 rent portion. He gave it to his mother in a TD Bank brown envelope in \$100.00 bills. He says he was home on March 3rd when Ms. B.B. came by for the rent. He testified, assertively, that Ms. B.B. came by at about the same time of the day as this hearing was being held; about 3:30 p.m.. He did not see the money changing hands because he was in the bathroom. He knows the rent money had been on the table in the brown envelope.

The tenant testified again that her son was mistaken about the time of day, that was, in fact, 8:35 a.m. when Ms. B.B. came by.

Ms. B.B. testified that at the start of March she called the tenant twice regarding the rent but there was no answer. She says she came to the rental unit at about 11:00 a.m. but her knocks on the door went unanswered. She says no rent was collected.

There does not seem to be any evidence of further communication between the parties about the rent after March 3rd and before the ten day Notice was issued on March 11th.

Analysis

Each witness gave his and her evidence in a straightforward and credible manner. Both sides offer believable versions of the events of March 3rd.

It is unlikely that the tenant and her son created the story about him being in the bathroom when Ms. B.B. attended for the rent. Each of their testimony was given in the absence of the other. At the same time, it is reasonable to assume that their recollection of the time of day would be reasonably equivalent, yet here it is not. The tenant asserts that the landlord attended in the early morning. Her son asserts that it was in the late afternoon. This is a serious discrepancy in their evidence.

It is also not impossible that the landlord, having received the cash rent without being obliged to give a receipt, is fraudulently taking advantage of that situation to evict the tenant. If that were so then one might wonder why the landlord, through his wife, would concoct a story about calling ahead and attending for the rent at all.

After considering all the evidence I find that neither side's version is more or less credible than the other.

In such circumstances, the determination of the issue must fall to the question of which side bears the burden proof that the rent was paid.

The burden of proof of payment of a debt is initially on the debtor. It is not the responsibility of a creditor, or any party, to prove a negative; that a debt has not been paid.

In landlord and tenant relations, the debtor is the tenant. It is the tenant's responsibility to prove rent has been paid. In that regard, the *Residential Tenancy Act*, s. 26(2) provides, "A landlord must provide a tenant with a receipt for rent paid in cash." A landlord who fails to provide a receipt when rent is tendered cannot argue that rent has not been paid and a tenant who turns over cash rent without require a concurrent receipt, even a pencilled note on a scrap of paper, is running a significant risk of being unable to prove payment.

In this case, I find that the tenant has not satisfied the burden of proof of payment of rent. I conclude that the March 2015 rent of \$1500.00 has not been paid.

Conclusion

The tenant's application to cancel the Notice to End Tenancy dated March 11, 2015 is dismissed.

The landlord is entitled to a monetary award of \$1500.00 plus recovery of the \$50.00 filing fee. I authorize the landlord to retain the \$700.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$850.00.

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: April 09, 2015

Residential Tenancy Branch

