



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF.

Introduction

The landlord applies for an order of possession pursuant to an uncontested ten day Notice to End Tenancy served on the tenant's partner Mr. N.R. on February 23, 2015 and pursuant to an uncontested one month Notice to End Tenancy for cause served at the same time.

He also seeks a monetary award for rent arrears of \$1023.50.

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 claimed?

Background and Evidence

The rental unit is a two bedroom apartment in a 21 unit apartment block. The tenancy started in August 2014. The monthly rent is \$1000.00 due in advance on the first of each month. The landlord holds a \$500.00 security deposit.

The two Notices were served at the same time by personal service on Mr. N.R. at the rental unit. He is an adult residing at the rental unit and so the service on him was valid service on the tenant pursuant to s.88 of the *Residential Tenancy Act* (the "Act").

The tenant denies seeing the one month Notice to End Tenancy. Nevertheless, she was duly served.

The tenant did not apply to cancel either Notice.

From the start of this tenancy the tenant quickly fell behind in her rent. At the end of October she owed \$2023.50. She proposed a repayment plan of a series of \$100.00 payments from November to July 2015 in order to satisfy the debt. The landlord agreed.

The landlord claims that as of his March 13th application he is owed \$1023.50. He provided a reconciliation statement indicating payments of rent and payments of installments toward the outstanding debt, ending in a balance for that amount.

The tenant produced receipts that indicate that in addition to the payments recorded by the landlord she paid \$2000.00 on December 1, 2015, not recorded in the landlord's reconciliation statement and \$1700.00 on January 12, 2015, whereas only \$1000.00 is recorded in the landlord's reconciliation statement as having been received on that date.

The tenant testified that in addition, she paid \$150.00 cash on December 15, 2014 but did not get a receipt.

The landlord responds saying that the "payment" dates on his reconciliation statement are the dates the money was deposited, not the dates the money was received. He also says that possibly the payment entry of \$700.00 paid February 4, 2015 was actually part of the \$1700.00 payment the tenant swore she made on January 12th. The entry for January 12 shows a payment of only \$1000.00.

The landlord is a certified general accountant.

The tenant paid \$1000.00 as rent for March. The landlord has marked on the reconciliation statement as it being "for use & occupancy."

The tenant's mother deposited a cheque of \$1000.00 with the landlord as "rent" for April. The landlord deposited the cheque. Again, the reconciliation statement shows that it is for "use & occupancy."

Analysis

The tenant has failed to apply to cancel either the ten day Notice to End Tenancy or the one month Notice to End Tenancy. As a result, by operation of s. 46 of the *Act* this tenancy ended ten days after service of the Notice, that is, on March 6, 2015. The tenancy would have ended pursuant to the unchallenged one month Notice on March 31, 2015.

However, the tenant has tendered April rent as “rent” and it was accepted without condition or comment by the landlord by his act of negotiating that cheque.

The Residential Tenancy Branch website warns landlords about receiving money for rent or for “use and occupation.”

If the tenant pays the overdue rent or utilities after the five day deadline, the landlord should clearly tell the tenant in writing that:

The payment for rent or utilities is being accepted for use and occupancy only – it does not cancel the 10 Day Notice to End Tenancy

The tenant must still move out

Note: The “use and occupancy” arrangement is very short-term – it allows a tenant to stay only for the rest of the month in which they received the Notice to End Tenancy and made a payment.

A landlord should not continue accepting rent or utility payments under this arrangement otherwise they run the risk of reinstating the tenancy.

And again on the same page:

A Note for Landlords

Be clear if you don't want a tenancy to continue – if a tenant pays rent or other fees after the five day deadline in the notice to end the tenancy, be sure to communicate in writing what your intentions are for accepting such payments.

Proof of your intention and understanding at the time money was exchanged will be required if dispute resolution is necessary – an arbitrator will decide whether a tenancy has been reinstated based on evidence from both parties.

Though the comments above relate to payments of money after a ten day Notice has been served, they are equally applicable to any situation whereby a tenancy may have ended as the result of a Notice to End Tenancy.

In this case, the tenant tendered money as rent. The landlord's unconditional acceptance of it was acceptance on the terms it was offered, that is as rent. By his failure to make clear to the tenant his intention to receive the money only as use and occupation money, the landlord's acceptance of rent money has resulted in a reinstatement of the tenancy.

The tenancy continues. The landlord's request for an order of possession is denied.

Regarding rent payments, I find that the tenant has not proved payment of \$150.00 cash on December 15, 2014. That money is not recorded by the landlord and the tenant failed to provide a receipt as proof of payment.

The landlord has not proved that he is owed any overdue rent money. His reconciliation statement conflicts with the documented receipts provided. I do not accept that the dates on the reconciliation statement marked "payment" might actually mean the "deposit" date. Some of the payment dates jibe with actual payment dates proved at hearing.

I dismiss the landlord's claim for a monetary order for unpaid rent. As the landlord may not have had full opportunity to consider and investigate the two receipts provided by the tenant and as the actual amount paid cannot reasonably be determined with any confidence on the evidence before me, I grant the landlord leave to reapply in regard to his unpaid rent claim should he determine, after full examination, that he is owed unpaid rent.

Conclusion

The landlord's claim 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 21, 2015

Residential Tenancy Branch

