



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: CNR, FF
Landlord's application: OPR, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession and a monetary order for unpaid rent. The hearing was conducted by conference call. The named tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled?
Is the landlord entitled to an order for possession pursuant to the Notice to End Tenancy?
Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

Background and Evidence

The rental unit is a house in Surrey. I have not been provided with a written tenancy agreement. The tenancy began July 15, 2014. The monthly rent is \$1,325.00, payable on the first of each month. The landlord testified at the hearing that she is unsure whether a security deposit has been paid. She submitted as part of her evidence a copy receipt dated July 10, 2014 for a payment of \$662.50. The notation on the receipt provided: "Sec. Dep ½ month rent". The landlord said she was unsure whether the receipt was for a deposit or if it recorded the payment of rent for the latter half of July.

The landlord testified that she was out of the country for several months and returned in April, 2015. She said that while she was away the tenants made rent payments by direct deposit to her bank account. She testified that the tenants have failed to pay rent

for the months of February, April, May and June. The landlord said she received a payment for March by direct deposit to her bank, but no other payments have been made since she received the March payment. The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent dated May 2, 2015 by handing a copy to the male tenant on May 2nd. The Notice alleged that the tenants failed to pay rent in the amount of \$3,975.00 that was due on May 1, 2015. The Notice required the tenants to move out by May 15, 2015. On June 2, 2015 the landlord personally served the female tenant with a second Notice to End Tenancy for unpaid rent, this one in the amount of \$5,300.00 inclusive of June rent.

The tenant said at the hearing that she paid the rent for all the claimed months by cash payments to the landlord. She said that she paid the landlord \$2,650.00 in cash on April 20th. The payment was given to the landlord outside in the yard, between the rental unit and the landlord's neighbouring property. The tenant said that she paid \$1,325.00 in cash to the landlord on May 4th and again in June. The tenant claimed that the landlord gave her receipts for each of these payments. The tenant claimed that the landlord is now refusing to acknowledge the payments and is trying to evict her because the tenant brought a dispute resolution proceeding to obtain a repair order. The tenant claimed to have submitted the receipts as evidence, but she said that she submitted them to the landlord's file by mistake, but having inspected all of the files in question, including the tenant's previous application, heard by me on June 10, 2015, I have determined that the tenant has not submitted any receipts or other documentary evidence to establish that she made the rental payments in question.

The landlord responded to the tenant's testimony. She said that the tenant did not make any of the alleged cash payments and she did not give the tenant receipts for any such payments. She repeated her testimony that the last payment by the tenant was made in March and there have been no payments since then.

The tenant requested an adjournment so that she could submit additional evidence, namely: the receipts she claimed to have received from the landlord.

Analysis

At the hearing I refused the tenant's request for an adjournment. I did so because I consider the request to be an effort to delay the proceeding, a delay that would constitute a serious prejudice to the landlord.

I accept and prefer the landlord's testimony with respect to rent payments over that given by the tenant. Before April 20, 2015 the tenant made rent payments to the

landlord by direct deposit to the landlord's bank account, however she claimed that on April 20, 2015 she paid the landlord \$2,650.00 in cash. The landlord denied receiving the payment and denied providing a receipt. The tenant has known for months that the landlord claimed that she had failed to pay rent and she has claimed to have made two cash payments even after she was served with a 10 day Notice to End Tenancy for unpaid rent.

The tenant did not submit any documentary evidence in support of her position, save for copies of the two Notices to End Tenancy. The first Notice was submitted as evidence when she filed her application on May 5, 2015. It is inconceivable, given the nature of the dispute, that she would not have also submitted copies of the alleged rent receipts when she filed her claim. In her claim filed on May 5th the tenant said that: "rent has been paid landlady is trying to say no because I have informed her that I am demanding repairs be done to the house." The tenant attended at the Residential Tenancy Branch on June 9, 2015 and submitted late evidence consisting of the second Notice to End Tenancy dated June 2, 2015. She submitted no other documents.

The landlord testified forthrightly as to the lack of rent payments. She personally served a Notice to End Tenancy on May 2, 2015. The tenant claimed to have made a cash payment of \$1,325.00 on May 4th after the Notice was given. That testimony is not credible, especially in light of the fact that the tenant filed her application the following day, May 5, 2015 and failed to mention the payment in her application for dispute resolution. Given that the tenant had already raised an issue about disputed rent payments in her application filed on April 20, 2015, it is not believable that she made another cash payment on May 4th and provided no receipt and made no mention of it when she filed her application the following day. The common sense approach would have been to provide a verifiable payment by cheque, bank draft or money order if, as the tenant claimed, there was already an earlier disputed payment.

I accept the landlord's testimony that rent has not been paid for February, April, May and June and that the sum of \$5,300.00 is currently outstanding. I dismiss the tenants' application to cancel the Notice to End Tenancy dated May 2, 2015 and I grant the landlord an order for possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that court.

I award the landlord the sum of \$5,300.00 for unpaid rent for the four months in question. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$5,350.00. Based on the receipt provided by the landlord, which described the payment as a security deposit, I find that the tenants did pay a security deposit of \$662.50 at the start of the tenancy. I order that the landlord

retain the deposit in partial satisfaction of the monetary award and I grant the landlord an order under section 67 for the balance of \$4,687.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenants' application to cancel the Notice to End Tenancy has been dismissed without leave to reapply, the landlord has been granted an order for possession and a monetary order for unpaid rent.

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: June 17, 2015

Residential Tenancy Branch

