



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ryan Trott
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This was an application to cancel a Notice to End the Tenancy for non-payment of rent dated July 3, 2015. Both the landlord and tenant were represented at this application.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Notice to End the Tenancy?

Background and Evidence

RT manager for the respondent admitted service of the application. The respondent testified that he served the Notice by posting it to the tenant's door on July 3, 2015.

RT admitted that he was not employed by the landlord at the commencement of the tenancy but testified that he was advised by the landlord that the tenant had not paid the security deposit notwithstanding having moved in on May 1, 2015. RT testified that the tenancy began on May 1, 2015. The rent was \$ 795.00 and the security deposit was supposed to be \$ 392.50. RT found a receipt for the first month's rent but could not find one for the security deposit. He requested a receipt from the tenant but she was unable to produce one therefore he issued this notice. He also discovered that a move in inspection had not been done and accordingly FM also employed by the landlord testified that she conducted one on June 12, 2015.

SV the tenant testified that she dealt with AC a former employee of the landlord who was manager at the time. She testified that on May 1, 2015 upon moving in, she paid AC the first month's rent and a security deposit in cash. She testified that on May 1, 2015, AC only gave her a receipt for the rent promising a separate receipt for the security deposit later at the move in inspection. He also did a move in inspection on May 1, 2015 but did not provide a copy of the inspection report nor produce a receipt for the security deposit as promised. He continually kept forgetting to issue one notwithstanding being asked on three occasions. The applicant testified that after numerous requests she eventually stopped asking for the security deposit receipt. Her father JV also testified and confirmed all of the tenant's experience with AC as he was present when she first viewed the suite and on the move in day may 1, 2015.

At the end of the hearing the tenant advised that she moved out of the unit on July 31, 2015 and had not yet to receive her deposit returned.

Analysis

I find that the tenant and her father gave their evidence in a truthful and straight-forward fashion. I accept their evidence. As the landlord's agents had no personal knowledge of what actually transpired regarding the payment of the security deposit, I prefer the evidence of the tenant and her father over any agent of the landlord herein. I find that the tenant paid the security deposit of \$ 392.50 on May 1, 2015 to a former employee of the landlord.

The landlord issued a Notice to End the Tenancy for non-payment of rent which was the incorrect form. Pursuant to section 47(1) of the Act the landlord ought to have issued one-month Notice.

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

Section 52 of the Act states that a must be issued in the correct form in order to be effective.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, **be in the approved form.**

I therefore find that as the landlord issued the notice on the incorrect form it is invalid and of no effect. The tenant has moved out and accordingly I find that the tenancy ended on July 31, 2015.

Conclusion

I found the notice to end the tenancy dated July 3, 2015 is not valid and of no effect. I find that the tenancy ended on July 31, 2015 the date the tenant moved out. I caution the parties to govern themselves according to section 38 of the Act regarding security deposits. I make no order as to the recovery of the filing fee.

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: September 08, 2015

Residential Tenancy Branch

