



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 644314 Alberta Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNR OPR CNR

Introduction

This hearing dealt with (a) an application by the landlord for an order of possession and a monetary order; and (b) an application by the tenant for an order cancelling the landlord's 10 Day Notice to End Tenancy dated September 18, 2015 and a monetary order. The landlord also requested recovery of the filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on September 3, 2013. The rent is \$690.00 due in advance on the last day of the month immediately preceding the rental period. The tenant paid a security deposit of \$345.00 at the start of the tenancy.

According to the landlord, the tenant had always paid her rent by cheque delivered to the building manager until February 28, 2015 when the tenant told the building manager that she was going to start paying by direct deposit. The building manager then proceeded to give the tenant receipts for direct deposit payments for the rent payments for March, April, May, June and July. However, in July, it was discovered by the landlord that the tenant had not in fact been making any rental payments for these months. The landlord testified that the tenant said she had made direct deposit payments but that she in fact had not. The landlord testified that he then spoke to the tenant about this and the tenant made two "catch up" payments of \$200.00 and \$300.00 in July. The tenant then went on to start paying the rent again by cheque rather than direct deposit and the rent was thereafter paid in full and on time for the months of August, September, October and November. On September 18, 2015 the landlord

served the tenant with a 10 Day Notice for unpaid rent in respect of the outstanding rent for the period March through July. The tenant disputed the Notice on September 22, 2015. The tenant claims that all rent was paid and that the receipts she was given by the building manager confirm that.

For her part, the tenant denies ever *agreeing* to make “catch up payments” and only agreed to pay those amounts because the landlord demanded them of her and she was “so shocked and scared” that she gave the cheques.

As for the tenant’s rental payments for the months of August, September, October and November – no receipts were issued.

The landlord presented one witness – the building manager. The building manager testified that she has been part time manager at the residential property for four years. She testified that she collects rents, makes deposits and issues receipts. She testified that the tenant was the only one to ever start paying by direct deposit and that all other tenants always paid by cheque or cash. The building manager testified that the tenant started asking for receipts for the direct deposits and that she (the building manager) issued receipts “on her word.” Then in July the manager says she realized the deposits had not been made.

Analysis

Order of Possession/Cancel Notice

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. In the present case, the tenant disputed the Notice. At the hearing the tenant claims to have paid all the rent for the relevant period but the landlord disputed this claim. Rather, the landlord claims that the tenant made two “catch up payments” totalling \$500.00 but that was it.

Either way, however, the tenant then resumed making rental payments in August and has done so ever since. The landlord did not issue receipts for these payments.

I asked the parties specifically about whether receipts had been issued by the landlord for these payments and both confirmed that none had been issued. This point is important because by accepting rental payments without qualification, the landlord reinstated the tenancy. If the landlord had wished to qualify his acceptance of the rent

and avoid reinstating the tenancy, the way to have done that would have been to issue receipts which stated clearly that the rent was being accepted on a “use & occupancy basis only”.

As a result, I find that the landlord reinstated the tenancy when further rents were accepted from the tenant without advising her that the rent was being accepted for use and occupancy only and I grant the tenant an order cancelling the 10 day Notice to End Tenancy dated September 15, 2015.

Outstanding rent

Based on the totality of the evidence before me, both the testimony of the parties and the landlord’s witness, as well as the documents submitted by the parties, I am satisfied that the landlord has established a monetary claim for outstanding rent in the amount of \$2,950.00. This amount is comprised as follows:

February rent	\$690.00
March rent	\$690.00
April rent	\$690.00
May rent	\$690.00
June rent	\$690.00
July rent	\$690.00
Less: “catch up payments”	(\$500.00)
TOTAL	\$2,950.00

I have made this finding for the following reasons: The tenant had never made rent payments by direct deposit and had never been issued rental receipts before this time. However, as soon as the tenant began paying by direct deposit she insisted on receipts from the building manager. It is true that the manager was careless to have issued receipts before confirming payments had been made but to my mind that just reflects the fact that the manager trusted this tenant because she had always paid her rent in the past. I am also influenced in my decision by the fact that if the tenant had indeed made all the rent payments then why had she agreed to make “catch up payments” in July? Furthermore, the tenant did not submit nor claim to have in her possession any bank receipts showing that these direct deposits had been made. I found the evidence of the landlord and the building manger to be reasonable in the circumstances and that it was consistent and to the point. For all of these reasons, on balance, I find that the landlord has established its claim in the amount of \$2,950.00.

Tenant’s monetary claim

The tenant has made a monetary claim in the amount of \$500.00. This claim is essentially for return of the \$500 “catch up payments” that the tenant made in July. The tenant claims she wrote these cheques under duress and that she never believed they were owed to the landlord at all. The tenant maintains that she paid all rent that was due for the March – July 2015 period and that there was no rent outstanding. I have already done a detailed analysis of my findings on the issue of the rent payments for this period. I have already found that the tenant did not make the rent payments as she claims and that she is not entitled to return of the \$500.00. I therefore dismiss this portion of the tenant’s claim.

Conclusion

I order that the landlord’s Notice to End Tenancy dated September 15, 2015 be and is hereby cancelled. The tenancy will continue according to its original terms. I dismiss the landlord’s request for an order of possession.

I dismiss the tenant’s monetary claim.

I grant the landlord a monetary order in the amount of \$2,950.00. I also find that based on the outcome of this matter, the landlord may recover \$25.00 or half of the filing fee from the tenant for a total award of \$2,975.00. The tenant must pay this amount to the landlord. This order may be filed and enforced in the Small Claims Court of British Columbia.

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: November 23, 2015

Residential Tenancy Branch

