



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On November 9, 2015 the Landlord made an Application for Dispute Resolution by Direct Request (the “Application”) requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”).

The Landlord served the Notice of Direct Request Proceeding documents to the Tenant by registered mail on November 10, 2015. However, the Adjudicator who had conduct of the Landlord’s Application examined the written tenancy agreement provided by the Landlord into evidence and determined that the Landlord’s Application could not be progressed through the Direct Request process and required a participatory hearing. The parties were both sent new Notice of Hearing letters for this participatory hearing.

The Landlord, the Tenant, and the Tenant’s mother appeared for the hearing and provided affirmed testimony. The Tenant’s mother confirmed that the Tenant had received the documents and a copy of the Landlord’s Application by mail. The Tenant confirmed that he had not provided any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to make findings in this decision.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* (the “Act”) apply to this tenancy?
- Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

The parties confirmed that this tenancy started on September 15, 2015 and a written tenancy agreement was signed with the intention that this was going to be a long term rental situation. As a result, the Tenant paid prorated rent for the period of September 15 to September 30, 2015 and a security deposit of \$350.00. The parties agreed that although the tenancy agreement does not stipulate it is for a fixed term period, the monthly rent of \$700.00 is payable on the first day of each month and is for a fixed term due to end at the end of April 2016.

The Landlord testified that the tenancy was under the jurisdiction of the Act and that the Tenant was paying a fixed amount of rent for the term of the tenancy. The Tenant and his mother did not dispute this testimony and did not make any submissions with regards to jurisdiction in this matter.

The Landlord testified that the Tenant only paid rent in the amount of \$190.00 on November 1, 2015. As a result the Tenant was personally served with the Notice on November 2, 2015 in the amount of \$510.00 due on November 1, 2015. The Landlord confirmed that the Tenant paid rent for October and December 2015 and for January 2016 in the amount of \$700.00 for each month. The Landlord claimed that the Tenant was in rental arrears only for November 2015.

The Tenant's mother testified that the Tenant has a mental illness and the Landlord is trying to take advantage of this. The Tenant's mother testified that the Tenant is not in rental arrears as his rent is paid by social services directly to the Landlord. The Tenant confirmed that social services had paid the Landlord \$700.00 for rent on November 1, 2015.

When the Landlord was asked about this several times during the hearing, the Landlord eventually confirmed that social services had indeed paid him \$700.00 on November 1, 2015 but he had applied \$510.00 of this money to damages caused by the Tenant. The Tenant denied causing any damage to the rental unit citing that his rental unit had been broken into. The Tenant's mother submitted that the Landlord was using the Tenant's rent money towards the alleged damages.

The Tenant confirmed that he had received the Notice on November 2, 2015 by an agent of the Landlord but did not dispute this as there is no unpaid rent in this case.

Analysis

Firstly, have examined the undisputed evidence of the parties in relation to jurisdiction in this matter, I do find the Act applies in this case and is not an agreement for living accommodation occupied as vacation or travel accommodation. This is based on the fact that neither party presented evidence to suggest otherwise, and I find the parties engaged into a fixed term tenancy which requires monthly payment of a fixed amount of rent.

As I have determined jurisdiction does apply in this case, I now turn my mind to the validity of the Landlord's Notice. The Landlord confirmed that he had received rent in the amount of \$700.00 from a third party who pays the Tenant's rent in this tenancy. Therefore, I find that there are no rental arrears in this case.

The Act does not allow a Landlord to apply rent towards alleged damages caused by a Tenant and then to claim this to be unpaid rent. The Landlord is obligated to deal with damages to the rental unit using other remedies under the Act, not a Notice for unpaid rent. Therefore, the Notice is not valid.

Conclusion

The Act applies to this tenancy. The Tenant is not in any rental arrears. Therefore, the Notice served to the Tenant dated November 2, 2015 is not valid. As a result, the Landlord's Application is dismissed without leave to re-apply.

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: January 20, 2016

Residential Tenancy Branch