



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This is a Review Hearing granted to deal with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Both parties attended the hearing by conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence package(s) of the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

During the hearing both parties confirmed that the tenant has paid the rental arrears on December 12, 2015 and that as of the date of this hearing there are no rental arrears. As such, the landlord has withdrawn his application for a monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2010 on a fixed term tenancy ending on March 31, 2011 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 30, 2010. The monthly rent was \$850.00 and the landlord has also submitted two completed notice of rent increase form bringing the current monthly rent to \$894.00 as of June 1, 2014. A security deposit of \$425.00 and a pet damage deposit of \$425.00 were paid on March 30, 2010.

The landlord provided evidence that the tenant was served with the 10 Day Notice dated December 2, 2015 by posting it to the rental unit door on December 2, 2015. The landlord has submitted a copy of a completed proof of service document dated December 2, 2015 which confirms service in this manner with a witness.

The 10 Day Notice dated December 2, 2015 stated that the tenant failed to pay rent of \$194.00 that was due on December 1, 2015. The 10 Day Notice displays an effective end of tenancy date of December 12, 2015.

The landlord provided evidence that on December 1, 2015 the tenant paid \$700.00 in cash for part of the rent and that the landlord issued a receipt "for use and occupancy only".

Both parties confirmed in their direct testimony that the tenant paid the \$194.00 rental arrears on December 12, 2015. The tenant stated that she tried on 3 occasions after receiving the notice on December 2, 2015 to pay the rental arrears. The tenant stated that she attended the landlord's onsite rental office on December 8, 9 and 11 to try and pay the rent, but that no one was at the office on all three occasions. The landlord disputed this claim stating that there are approximately 16 staff members on site. The landlord stated although the office is not always open the landlord has a 24 hour telephone number to be contacted.

The tenant argued that the landlord has a long standing practice of allowing tenants to pay their rent late if, 2/3 of their rent is paid on the 1st day of the month and then the remaining 1/3 is paid at a later date. The landlord has disputed this claim stating that no such practice exists. The tenant relies on 6 letters submitted in support of this claim.

- An Email dated February 1, 2016 which states:

...I was a long term resident at B.E. and resided there for many years. During that time it was common practice for the manager to accept 2/3's of a month's rent and the remainder of the rent to be paid on an agreed upon date as well as any late fee incurred...

- An illegible letter.
- A hand written unsigned letter dated February 5, 2016 which states:

...I am writing this letter for J.W. in regards to payment of rent. For the years in which I have worked here it was understood that if the tenants had paid at least 2/3's of their rent management would not file with the tenancy branch. Only time we would file is if it was constantly late. J. would always if she was short with rent pay the 2/3's and would have it paid either on or day after the filing date she would pay the cost of filing including pre-agreed upon late fee. At this time I am with-holding my name if its needed please let me know...

- A typed letter by W.R.C. recounting a conversation with one of the landlord's agents.
- A typed letter from the tenant's witness, J.D. dated February 9, 2016 which recounts a conversation with the tenant and her actions following that conversation.
- A typed letter from tenant with her written submissions dated February 9, 2016.

The landlord stated that he recognized the hand writing of the unsigned letter dated February 5, 2016 and acknowledged that this person was a former employee of the landlord.

The tenant also relies upon copies of 7 rent receipts issued by the landlord for rent paid.

August 31, 2013	\$300.00 for Aug Rent and Late Fees
October 31, 2013	\$300.00 for Use and Occupancy for Oct.
July 3, 2015	\$600.00 for Use and Occupancy Only
December 1, 2015	\$700.00 for Use and Occupancy Only B/O \$194.00
December 12, 2015	\$219.00 for Use and Occupancy Only
December 24, 2015	\$915.00 for Use and Occupancy Only
December 24, 2015	\$915.00 for Use and Occupancy Only
January 29, 2016	\$915.00 for Use and Occupancy Only
February 12, 2016	\$915.00 for Use and Occupancy Only

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find based upon the undisputed evidence of both parties that the tenant did fail to pay all of the rent owed as per the 10 Day Notice. However, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord based upon the submitted rental receipts, the email, signed and unsigned statements provided by the tenant that the landlord allowed the practice of receiving rent late as long as the tenants paid a late fee. I also find that the landlord failed to provide notice to the tenant that this was practice no longer accepted and that any future notice(s) to end tenancy would be acted upon. On this basis, the landlord's application for an order of possession is denied.

Conclusion

The landlord's application for an order of possession is denied.

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: March 09, 2016

Residential Tenancy Branch

