



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and compensation for damage or loss under the *Residential Tenancy Act*, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating this month to month tenancy began July 1, 2015. Monthly rent was payable in the amount of \$800.00 and the Tenant was required to pay a security deposit of \$400.00.

D.D. testified that the Landlord purchased the rental building in July of 2015 at which time the parties entered into a tenancy agreement. D.D. confirmed that the tenancy predated the Landlord's purchase of the rental building, although she could not say how long the Tenant had been living in the rental unit prior to the sale of the property. D.D. further confirmed that the Tenant was previously employed as a property manager by the previous owners.

Introduced in evidence was a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which indicated the sum of \$1,500.00 owing as of January 1, 2016 (the "1st Notice"). D.D. testified that the 1st Notice was invalid as the \$1,500.00 figure was inaccurate having been "generated by the system".

D.D. testified that she had a copy of another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, also dated January 5, 2016, but which noted that the sum of \$800.00 owing as of January 1, 2016 (the "2nd Notice"). D.D. was not able to testify as to which Notice was served on the Tenant, only to say she assumed they both were served on January 5, 2016, as they were in her file.

D.D. testified that she believed that S.R. served the Tenant by posting to the rental unit door on January 5, 2016. D.D. testified that S.R. no longer works for the corporate Landlord and as such, D.D. basing this information on a "serving list" which was also "generated by the system". She was unable to testify which Notice was served based on this serving list as she stated the dollar amount was not noted.

The Application for Dispute Resolution filed February 2, 2016, indicates the Landlord sought the sum of \$250.00. D.D. stated that the Application was inaccurate and should have read \$350.00.

D.D. then gave the following testimony regarding the amounts owing by the Tenant:

- On January 19, 2016 the Tenant paid the sum of \$450.00 by debit card.
- On February 17, 2016 the Tenant paid a further sum of \$650.00.

- As of the end of February 2016, the Tenant had overpaid by \$300.00.
- The Tenant paid \$600.00 on March 1, 2016 and \$350.00 on March 15, 2016.

Based on this testimony, it appeared as though the Tenant had overpaid her rent, rather than being in a deficit position. When I brought this to D.D.'s attention, she stated that the \$800.00 Notice included amounts owing for the Tenant's security deposit. D.D. stated that as the Tenant had occupied the rental unit for some time, the new owners gave her the opportunity to pay her security deposit of \$400.00 "over time" from July 2015 to October 2015. She stated this was a "verbal agreement".

D.D. further testified that as of the date of the hearing, the Tenant owed \$200.00 which D.D. stated was the amount still owing for her security deposit.

The Tenant denied being served either Notice. She also stated that she was informed by the new owners that she was not expected to pay a security deposit as she had been a tenant for many years without paying one and her lack of deposit was "grandfathered in". She claimed to have a letter to this effect and stated that she provided this letter to the Landlord on more than one occasion.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows.

I am unable to find that the Tenant was served with a Notice to End Tenancy in accordance with the *Residential Tenancy Act*.

D.D. confirmed that the 1st Notice was issued erroneously. Although she presumed both Notices were served on January 5, 2016, D.D. was not able to confirm service of the 1st Notice nor was she able to confirm service of the 2nd Notice. D.D. stated that the 1st Notice was invalid.

The Tenant denied being served the 2nd Notice.

The onus is on the Landlord to prove service of the Notice to End Tenancy. Sections 46 provides that it is upon such service that the Tenant is obligated to either pay the outstanding rent or make an application to dispute the Notice.

As I am unable to find that the Tenant was served, I dismiss the Landlord's application for an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*. The tenancy will continue until ended in accordance with the *Act*.

D.D. confirmed that the Application also erroneously noted the amount outstanding for rent. Further, she stated that the amount outstanding at the time of the hearing related to the Tenant's security deposit. It is not clear what portion of the \$800.00 amount (on the 2nd Notice) relates to outstanding rent, or to the Tenant's security deposit.

The parties agreed that the Tenant was in occupation of the rental unit as a property manager prior to the Landlord purchasing the property.

D.D. testified that the Landlord agreed the Tenant could pay the security deposit over time such that it would be paid in full by October 2015. This alleged agreement was not in writing. The Tenant disputed this claim and stated that she was not obligated to pay a security deposit. She further denied there was any agreement that she pay a security deposit over time.

The tenancy agreement submitted in evidence indicates a security deposit is payable; however, no date for such payment is provided. The Landlord failed to submit any documentary evidence to support a finding that the Tenant was informed her security deposit was due in full by a particular date.

As the outstanding amount noted on the 2nd Notice, and the amount claimed on the Landlord's Application for Dispute Resolution, may include a claim for some amount of this security deposit, I am unable make a finding as to the amount owing to the Landlord.

I find that the Landlord has failed to prove their claim for monetary compensation in the amount of \$200.00 and this claim is therefore dismissed.

The Landlord, having been unsuccessful, is not entitled to recover the fee paid to file their application.

Conclusion

The Landlord failed to prove service of the Notice to End Tenancy. The Landlord also failed to prove the outstanding amount. The Landlord's request for an Order of Possession and monetary compensation is dismissed. The tenancy will continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 22, 2016

Residential Tenancy Branch

