



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelled in notice to end tenancy – Section 46;
2. An Order allowing the Tenant to change the locks – Section 70; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Landlord provided sufficient evidence of unpaid rent?

Is the Tenant entitled to change the locks?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on November 1, 2015. Rent of \$950.00 is payable monthly on the first day of each month. On February 16, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”).

The Landlord states that for November and December 2015 the Tenant paid the rent in cash by giving it directly to the Landlord who then issued receipts. The Landlord states that until January 26, 2016 he had assumed that the Tenant had paid rent in cash and

that a receipt was issued for the January 2016 rent. The Landlord states that upon reviewing the accounting books however it was noted some someone had not paid the rent. The Landlord states that by reviewing the cheques and receipts it was deduced that the Tenant had not paid the rent. The Landlord states that the Tenant told the Landlord that the rent was paid in cash by placing it in the security box. The Landlord states that he has kept the keys secure including taking keys back from persons who acted for him while he was on holidays. The Landlord states that the Tenant has paid rent for February, March, and April 2016 by money order. The Landlord states that no receipts were given to the Tenant for these payments and nothing was said to the Tenant about the Landlord continuing to seek an end to the tenancy.

The Tenant states that at the onset of the tenancy the Landlord told the Tenant to make his rent payments by placing them in the security box in the lobby. The Tenant states that the Tenant paid January 2016 rent in cash by putting the payment into an envelope and then into the Landlord's security box. The Tenant states that the Landlord has never indicated that payment of cash into the security box was not acceptable. The Tenant states that there is nothing on the security box indicating that cash should not be placed in the box. The Tenant states that in December 2015 two different people came to his unit on 3 different occasions to collect rent that had been paid. The Tenant states that the Landlord has since told the Tenant that the security box had previously been broken into. The Tenant states that the lax management style leaves the Tenant with apprehensions about who has what keys and asks for an order to change the locks on the unit. The Tenant states that there has been no indication to date that anyone has entered his unit without his knowledge or permission.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent. When a tenant disputes a notice to end tenancy the burden of proof lies with the landlord. The Tenant provided clear and believable evidence that January 2016 rent was paid by placing the monies into the security box. I note that all others rents have been paid by the Tenant before and since the issuance of the Notice. The evidence suggests that

there are security concerns with the issuance of keys, including keys to the security box. For these reasons, I find that the Landlord has failed to provide sufficient evidence to substantiate on a balance of probabilities that the Tenant failed to pay the rent for January 2016. What happened to the rent after being paid by the Tenant is unknown. As a result I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice.

Although there are some concerns with access to the “security” box there is no evidence that the Tenant’s unit has been entered without authority. As a result I find that the Tenant has not sufficiently substantiated a basis for changing the locks to the unit and I dismiss the claim for such.

As the Tenant has been primarily successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect. The tenancy continues. I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 06, 2016

Residential Tenancy Branch