



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

During the hearing the parties agreed that the tenant has provided the landlord with notice of her intent to vacate the rental unit by the end of April 2016. The landlord agreed to not pursue the order of possession and I amend her Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on November 16, 2008 for a month to month tenancy beginning on November 16, 2008 for a monthly rent of \$880.00 due on the 1st of each month with a security deposit of \$440.00 paid;
- A copy of a Notice of Rent Increase issued by the landlord on June 29, 2011 for an increase in rent from \$910.00 to \$930.00 per month effective October 1, 2011;
- A copy of a tenant ledger recording payments of rent of \$920.00 beginning July 1, 2015 but excluding any payment made in October 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on March 15, 2016 with an effective vacancy date of March 25, 2016 citing \$990.00 in outstanding rent.

The landlord submitted that the owners of the residential property have hired a management company to manage the property and that from their records they have determined that the tenant has not been paying the full \$930.00 in rent for the period showing in the tenant ledger beginning July 1, 2015. The landlord also submitted that the tenant failed to pay rent for the month of October 2015 at all.

The tenant submitted that while she acknowledged receiving the Notice of Rent Increase in June 2011 when she went to pay it the first time the landlord gave her \$10.00 back from the \$930.00 paid and told her she only had to pay \$920.00 going forward.

In support of this position the tenant submitted into evidence several rent receipts dating from 2011 to 2014 all showing the landlord received \$920.00 per month from the tenant. The tenant submits that since the owners are no longer managing the property she no longer gets receipts for rental payments.

In regard to the landlord's claim that the tenant failed to pay rent for the month of October 2015 the tenant acknowledged that she had withheld rent at the start of that month because she was trying to get the landlord to attend her unit and make some repairs in her bathroom.

She stated the landlord did attend the unit and on October 16, 2016 she put her rent money, in cash, in the secured box that rent is usually deposited. The landlord stated, that according to her former colleague who was managing the property at the time, they did not receive any rent monies for October. She stated that perhaps the tenant was confused and that she made her November rent payment at that time. The tenant ledger shows that rent for November 2015 was paid on November 5, 2015.

Analysis

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$930.00 for the month of October 2015 and considering the tenant's testimony that she paid the landlord \$920.00 on October 16, 2015, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy can significantly impair her ability to prove that the tenant did not pay a portion of rent. While the landlord did submit a tenant ledger, to corroborate her claim that the tenant did not pay rent in cash on October 16, 2015 the agent attending the hearing had no direct knowledge of any such payment as she was not responsible for this property at the time.

Based on the above, I am not satisfied the landlord has established rent in the amount of \$930.00 is owed for the month of October 2015.

In regard to the landlord's claim for the additional \$10.00 per month in rent for 6 months I find the landlord is estopped from claim any losses. Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

I find that the tenant has established that since the first time she was required to pay the rent based on the Notice of Rent Increase issued in June 2011 the landlord has allowed the tenant to pay only \$920.00 without any consequence or warning that she was not paying rent in full. I find the landlord cannot now, after 4 years, enforce the rent increase as issued in June 2011.

As a result, I find the tenant does not owe the landlord the additional \$60.00 claimed in this Application.

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution in its entirety.

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 11, 2016

Residential Tenancy Branch