



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant, the landlord and the landlord's agent attended the conference call hearing and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on February 02, 2016. At that time the tenant shared the unit with another tenant under separate tenancy agreements. The

parties agreed that the tenant's tenancy agreement stated that rent was \$550.00 per month due on the 1st of each month. On May 01, 2016 this was reduced to \$415.00 when the other tenant vacated the unit. The tenant paid half a month's rent of \$275.00 for a security deposit at the start of the tenancy.

The landlord testified that the tenant failed to pay the rent for May, 2016 on the day it was due. The tenant was served a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on May 02, 2016 in person. This Notice informed the tenant that he owed rent of \$415.00 which was due on May 01, 2016. The Notice also stated that the tenant owed utilities of \$255.63 which the landlord testified was entered in error as the rent includes utilities. The Notice has an effective date of May 07, 2016 and informed the tenant that he has five days to either pay the outstanding rent or file an application to dispute the Notice.

The landlord testified that the tenant informed them that he had left an envelope under the landlord's agent's door with a cheque in it from the Brain Injury Society for \$175.00 and cash of \$180.00. The landlord's agent testified that there was not an envelope left under his door and they did not receive a cheque or cash from the tenant. The landlord did however; contact the Brain Injury Society and they informed the landlord that the cheque sent to the tenant had not been cashed so they issued a new cheque for \$175.00 to the landlord for the portion of the tenant's rent that they pay on his behalf. The landlord agreed he has now cashed that cheque and the outstanding rent is only \$240.00.

The landlord testified that they did not inform the tenant that they accepted this rent payment of \$175.00 for use and occupancy only and yesterday the landlord entered into a new tenancy agreement with this tenant and another tenant as co tenants for this unit. The landlord testified that they do not seek to evict the tenant but do seek to recover the outstanding rent of \$240.00.

The tenant disputed the landlord's claim and testified that on May 02, 2016 the landlord and his agent came to collect the rent. The tenant testified that he asked them to give him an eviction notice. The tenant testified that the rent cheque from Brain Injury was supposed to be paid to the landlord before rent day but as there was a mix-up the tenant received the cheque on May 05, 2016 and put it in an envelope with \$180.00 he had saved towards his rent. The tenant testified that he considered that as his rent was now \$415.00 he was owed some money on his security deposit and he wanted to apply that to the rent also. The tenant testified that he went to the landlord's agent's unit on May 05, 2016 at 9.30 p.m. but the landlord's agent was not at home and as the tenant was worried about the deadline he put the envelope with the cheque and cash under the landlord's agent's door. The tenant testified that later the landlord wrote to ask the tenant where his rent was and that they did not receive the cheque or cash.

The tenant asked the landlord's agent where the cheque and cash are that were put under his door. The landlord's agent responded that he did not receive the cheque or cash from the tenant.

The landlord declined to cross exam the tenant.

The tenant seeks a Monetary Order for \$172.50 to recover the rent the tenant testified he paid to the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this matter the tenant has the burden of proof to show that he left an envelope under the landlord's agent's door with a cheque for \$175.00 and cash for \$180.00. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord's agent has testified that he did not receive an envelope with the cash or cheque under his door; the tenant testified that he placed this envelope under the door on May 05, 2016. Without corroborating evidence from the tenant then I must find that the tenant has not met the burden of proof in this matter and I find the tenant continues to owe rent of \$240.00. The tenant's application to cancel the Notice is therefore dismissed.

I will note here that the tenant is not permitted to deduct any amount from the security deposit to pay rent even if the rent has decreased during the tenancy, the security deposit paid at the start of the tenancy may continue to be held in trust by the landlord until the tenancy ends and then it may be dealt with under s. 38 of the *Act*.

Normally when there remains outstanding rent and the tenant's application to cancel a Notice to End Tenancy is dismissed s. 55(1)(b) of the *Act* provides that the landlord may be granted an Order of Possession. I find however, that the landlord has reinstated this tenancy by entering into a new co tenancy with this tenant and a new tenant yesterday and the landlord testified that he does not seek to evict the tenant. Consequently, I have not issued an Order of Possession to the landlord at this hearing.

If the rent remains unpaid the landlord may issue the tenant with a new 10 Day Notice to End Tenancy and seek a Monetary Order to recover any unpaid rent.

With regard to the tenant's application for a Monetary Order for \$172.50, the tenant testified that this was to recover the rent he had paid. As I have found there is insufficient evidence to show that rent was paid then the tenant is not entitled to recover this amount and his application for a Monetary Order is dismissed.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: June 15, 2016

Residential Tenancy Branch