



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRAN LE HOLDING CO LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed his Application requesting an order of possession for unpaid rent; a monetary order for unpaid rent; and to recover the cost of the filing fee.

The Tenant filed her Application to cancel the Notice to end tenancy for unpaid rent.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

Preliminary and Procedural Issues

The Tenant testified that she did not receive a Notice of Hearing and evidence from the Landlord. She testified that on an earlier occasion she witnessed the Landlord take mail out of her mailbox.

The Landlord testified that he sent the Notice of Hearing and evidence by registered mail on June 2, 2016, and did not take mail out of the Tenant’s mailbox. The Landlord provided a copy of the registered mail receipt.

There is insufficient evidence from the Tenant that the Landlord took the Tenant's mail. I find that the Tenant has been duly served with the Landlord's Notice and evidence, and it is deemed to have been received by the Tenant pursuant to section 90 of the Act.

At the start of the hearing, the parties agreed to not interrupt each other's testimony. However; during the hearing, the parties continuously interrupted each other and spoke over each other. In addition, the Landlord interrupted me while I was speaking on a number of occasions and he had to be cautioned about his behaviour. The Landlord's testimony was unclear and confusing due to him not staying on topic, speaking too quickly, and his thick accent. I explained to the Landlord that I was having difficulty understanding his testimony and I asked the Landlord to speak slower and to repeat his testimony on a number of occasions.

Issues to be Decided

- Did the Tenant pay the rent and should the Notice be cancelled?
- Is the Landlord entitled to an order of possession for unpaid rent?
- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Parties testified that the tenancy began in July 2015, or August 2015, as a month to month tenancy. Rent in the amount of \$950.00 is due on the first day of the month.

The Landlord testified that the Tenant did not pay all the rent that was due in May 2016, and June 2016. He testified that he received \$475.00 for rent from "welfare" for May 2016, and that the Tenant still owes him \$475.00 for May rent. The Landlord testified that he received \$475.00 for rent from "welfare" for June 2016, and that the Tenant still owes him \$375.00 for June rent.

The Landlord states that the decision from a previous dispute hearing granted the Tenant the right to withhold \$100.00 from rent and that is why the Tenant owes \$375.00 for June 2016.

The Landlord testified that he issued a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the Notice) on June 2, 2016. The Landlord testified that he has not received any payments from the Tenant towards the unpaid rent since issuing the Notice.

Other than providing documentary evidence of two cheques from BC Employment and Assistance in the amount of \$475.00 the Landlord did not testify or provide any other evidence to establish how the Tenant paid her rent in the past.

The Tenant responded that she has paid all the rent for the month of May 2016, and June 2016. The Tenant testified that on May 25, 2016, she paid the Landlord \$475.00 in cash for May 2016, rent. She states that the Landlord did not provide a receipt. The Tenant testified that on June 21, 2016, she paid the Landlord \$475.00 in cash for June 2016, rent. She states that the Landlord did not provide a receipt.

The Tenant called a witness who was waiting in an adjacent room to testify. The witness S.K. provided affirmed testimony that she witnessed the Tenant pay cash to the Landlord on May 25, 2016, and on June 21, 2016. The witness states that the Landlord and Tenant barely spoke during the transactions and the witness states that the Landlord did not issue the Tenant receipts.

Analysis

The burden of proving a loss is on the person who is claiming compensation for the loss. With respect to the Landlord's claim for unpaid rent in the amount of \$850.00, and considering the Tenant's testimony that she paid the Landlord the rent in cash on May 25, 2016, and June 21, 2016, 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 states 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.

In these circumstances, the Tenant testified that the Landlord did not provide a receipt for the cash payments. The Landlord's failure to provide receipts during this tenancy can impair his ability to prove that the Tenant did not pay a portion of rent. The Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the Tenant did not pay all the rent for May 2016, and June 2016.

I found the Tenant's testimony to be direct and straightforward, whereas I found the Landlords testimony to be confusing and evasive. It was difficult to get the Landlord to directly answer my questions regarding rent, mail, and receipts, and it was difficult to understand the Landlord's testimony.

I prefer the Tenant's testimony. The Tenant's testimony that the rent was paid in cash and the witness testimony corroboration of the Tenant's testimony outweighs the testimony of the Landlord. The Landlord has provided insufficient evidence to establish that the Tenant failed to pay the rent.

I find that the Tenant paid her rent for May 2016, and June 2016.

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated June 2, 2016, is set aside. The Landlord's application is dismissed. The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenants' application is successful. The 1 Month Notice issued by the Landlord dated June 2, 2016 is cancelled. The Landlord's application is dismissed.

The tenancy will continue until ended in accordance with the Act.

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: July 14, 2016

Residential Tenancy Branch