



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

On July 12, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; a monetary order for unpaid rent; and to recover the cost of the filing fee. The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Matters

At the start of the hearing, the Tenant testified that he also applied for Dispute Resolution. The documentary evidence provided to the Residential Tenancy Branch (RTB) from the Tenant shows an Application for Dispute Resolution; however, the Application was never received by the RTB. The Tenant did not file the Application with the RTB, and did not pay the required Application fee.

The Tenant requested an adjournment so that he could make Application to have his concerns addressed at the same time as the Landlord's Application.

The Tenant was advised that the issue being heard today is limited to whether or not the tenancy is ending due to non-payment of rent. The Tenant has leave to make Application for Dispute Resolution to deal with any other issues at a later date. The Tenant provided documentary evidence in response to the Landlord's Application regarding the non-payment of rent. Therefore the Tenant's request for an adjournment was denied.

Issues to be Decided

Is the tenancy ending because of unpaid rent and is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on May 1, 2016, as a fixed term tenancy for a one year period to continue thereafter as a month to month tenancy. Rent in the amount of \$750.00 is payable on the first of each month. The Tenant paid a \$375.00 security deposit to the Landlord.

The Landlord testified that the Tenant paid rent for May 2016, and June 2016, but did not pay him rent for the months of July 2016, and August 2016.

The Landlord issued two separate Notices to end tenancy to the Tenant. The Landlord served a 1 Month Notice To End Tenancy For Cause dated June 9, 2016, to the Tenant by hand delivering it to the Tenant on June 10, 2016. The Landlord amended the Notice by crossing out the parts of the Notice where it states 1 Month and hand writing the words 10 Days. The second page of the Notice is not amended and the Landlord has selected reasons to end the tenancy for Cause. The Tenant testified that he received the Notice.

When the Landlord did not receive the rent for July 2016, the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2016, to the Tenant by posting it to the Tenant's door on July 3, 2016. The Tenant testified that he received the Notice.

The Landlord testified that he has not received any rent from the Tenant since serving the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord is seeking an order of possession and a monetary order for the unpaid rent.

In reply, the Tenant testified that he did not dispute the Notices to end tenancy because he has paid his rent. He testified that he paid June 2016, rent by email money transfer, which the Landlord accepted and deposited. The Tenant testified that he also sent email money transfers in the amounts of \$750 to the Landlord for the months of July 2016, and August 2016. The Tenant testified that the Landlord has refused to deposit the rent money. The Tenant submits that the Landlord is trying to achieve a constructed eviction.

The Tenant provided documentary evidence in the form of bank documents to show that on July 2, 2016, the Tenant sent the Landlord an Interac e-transfer in the amount of \$750.00. The documentary evidence also shows that on July 30, 2016, the Tenant sent the Landlord an Interac e-transfer in the amount of \$750.00.

In response to the Tenant's testimony, the Landlord testified that he did receive both of the interact e-transfers but he did not accept the transfers. The Landlord testified that the message to recipient within the e-transfers states that the payment is for unit B1 rather than unit B6. The Landlord states that there is a dispute between the parties on

whether or not the Tenant is entitled to move into unit B1. The Landlord testified that he did not want to establish that the Tenant had rights to unit B1.

The Landlord testified that after he decided to not accept the e-transfer, he phoned the Tenant at work and told him to send the rent for unit B6.

In response, the Tenant testified that the Landlord never called him at work to discuss the matter. The Tenant testified that he wrote B1 on the e-transfer message because he believes that he has the right to move into unit B1.

Analysis

Based on the evidence before me, and the testimony of the Landlord and Tenant, I find that the Tenant attempted to pay his rent for the months of July 2016, and August 2016.

I find that the Landlord refused to accept the rent payments. The Landlord knows that the Tenant resides in unit B6 and in the circumstances the Landlord should have accepted the e-transfer payments for the rent. The Landlord could have accepted the rent payment and issued a receipt stating the payment was accepted for unit B6, or the Landlord could have sent a message or letter to the Tenant stating that the e-transfer payment was accepted as rent for unit B6.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2016, is an invalid Notice. The Notice is set aside.

I also find that the Notice to End Tenancy dated June 9, 2016, is invalid for the purpose of ending the tenancy for unpaid rent. The Landlord improperly used a 1 Month Notice To End Tenancy For Cause, and the 1 month Notice does not contain accurate information regarding the tenants' rights. The Notice is set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was not successful, I do not grant recovery of the \$100.00 fee that the Landlord paid to make the application for dispute resolution.

The tenancy continues until ended in accordance with *the Residential Tenancy Act*.

Since the e-transfer payments for rent may have expired, the Tenant has until September 11, 2016, to ensure all rent owing to the Landlord is up to date. If the Tenant has not paid all the rent owing by September 11, 2016, the Landlord is at liberty to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2016, is an invalid Notice. The Notice is set aside.

The tenancy continues until ended in accordance with the Residential Tenancy Act.

The Tenant must pay all rent owing to the Landlord by September 11, 2016.

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: September 01, 2016

Residential Tenancy Branch

