



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

OPR MNR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent. The landlord applied through the Direct Request process. On August 29, 2016 an arbitrator considered the application and evidence and granted the landlord an order of possession and a monetary order. The tenant applied for a review consideration and was granted a review hearing. I was assigned and conducted a new hearing on this application. The landlord, the tenant and a witness for the tenant participated in the teleconference hearing.

I note that at the outset of the hearing the tenant stated that the person on the phone did not sound like the landlord she usually dealt with. She stated that there were two men, one older and one younger, and she usually dealt with the older man. The landlord on the phone stated that he was the landlord identified on the application, and he was “in his forties.”

Preliminary Issue – Service of Notice of Review Hearing

In the review consideration decision, the arbitrator ordered the tenant to serve the landlord with the notice of review hearing, as well as a copy of the review consideration decision and any evidence the tenant intended to rely upon in the review hearing. The tenant stated that she served the landlord with all of these documents by registered mail. In the hearing I entered the tracking number on the Canada Post website, which showed that the package was received and signed for by someone with the same first initial and last name of the landlord, on September 27, 2016.

The landlord stated that he did not receive or sign for the package, though it may have been signed for by someone else in his family. The landlord stated that he became aware of the review hearing when he attended the Residential Tenancy office and was told about it. I asked the landlord why he did not ask his family about receiving notice of the review hearing and the tenant’s evidence, and the landlord replied that he did not bother because he already had the information about calling in to the review hearing.

I found that the tenant took all proper steps to serve the landlord, and the landlord could not avoid service. I therefore admitted the tenant’s evidence and proceeded with the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The tenant began occupying the rental unit, a single family dwelling, in April 2015. The current landlord purchased the property in May 2016, and on June 7, 2016 the landlord and the tenant entered into a new tenancy agreement. The monthly rent continued at \$1,100.00 per month, payable in advance on the first day of each month.

The parties agreed that on June 28, 2016 there was a flood in the rental unit kitchen, and the tenant called a plumber. The parties also agreed that afterward another plumber, called by the landlord, attended at the unit, and the kitchen required renovation due to the flood damage.

Landlord's Claim

The landlord provided evidence that on July 5, 2016 he served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the tenant's door in the presence of a witness.

The landlord stated that the tenant did not pay rent for July, August, September or October 2016.

Tenant's Response

The tenant stated that when the flood occurred on June 28, 2016 she called the landlord and spoke to the landlord's wife, who said it was okay to call the plumber. The tenant stated that the landlord's wife also told her that she could pay the plumber \$288.00 and take it out of July 2016's rent. The tenant stated that on July 4, 2016, in the presence of two friends, she gave the landlord the plumber's receipt and paid the landlord the balance of \$810.00 for July 2016 rent. The witness for the tenant stated that she was one of the two friends present, and she saw the tenant pay the landlord, a man with short hair who was wearing a bright yellow shirt, a total of \$810.00, comprised of eight piles of five \$20.00 bills, plus one \$10.00. The tenant provided a copy of a plumbing invoice dated June 28, 2016, indicating that the tenant paid \$288.33 for the work done on that date. She also submitted a copy of a bank statement showing that on July 4, 2016 she made two withdrawals of \$400.00 each.

The tenant stated that she paid the landlord August rent in cash at the beginning of September 2016, when the landlord came to the rental unit to do renos on the kitchen.

Analysis

I find that the landlord has failed to provide sufficient evidence to establish that the tenant failed to pay rent for July 2016. The tenant provided substantial evidence to show that she received permission from the landlord's wife to call a plumber and then pay the plumber from July's rent. The tenant and her witness were very clear about how the tenant paid the balance of \$810.00 to the landlord on July 4, 2015.

There appears to be a potential failure of communication between the landlord and his family, and it may have been that he was unaware or did not bother to find out that on some occasions his son or wife was acting on his behalf.

I therefore find that the notice to end tenancy dated July 5, 2016 is invalid, and the landlord is not entitled to monetary compensation for July 2016. I make no findings regarding the payment of rent for August 2016.

Conclusion

I hereby set aside the August 29, 2016 decision and orders in this matter and replace them with my decision and of this date.

The notice to end tenancy dated July 5, 2016 is dismissed, and the tenancy continues until such time as it ends in accordance with the Act.

The landlord's claim for July 2016 rent is dismissed. The landlord's claim for August 2016 rent is dismissed with 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: October 7, 2016

Residential Tenancy Branch