



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application for an order of possession pursuant to a notice to end tenancy for unpaid rent. The landlord made the application through the Direct Request process. An arbitrator considered the application and evidence and granted the landlord an order of possession. The tenant applied for a review consideration, and an arbitrator granted the review hearing. I conducted the review hearing on November 1, 2016. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing the tenant stated that he did not receive the landlord's additional evidence. The landlord stated that she sent the additional evidence to the tenant by regular mail. As the landlord did not provide sufficient evidence to establish that the tenant was served or should be deemed served with the additional evidence, I did not admit it. The tenant did not serve the landlord with the evidence that was submitted as part of his review consideration application, and I therefore did not admit that evidence either.

On the original application the landlord applied for an order of possession pursuant to a notice to end tenancy for unpaid rent. As unpaid rent was at issue, I heard testimony regarding the notice to end tenancy dated August 2, 2016 as well as payment of rent since that date. Therefore, I have considered and will make a determination on unpaid rent.

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 rental unit is a large house. The tenancy began on June 1, 2016, with monthly rent of \$2,900.00, due on the first day of the month. At the outset of the tenancy the tenant paid the landlord a security deposit of \$1,450.00 and a pet deposit of \$1,450.00. The tenant is the only named occupant of the unit. The tenant has rented out rooms in the unit to other occupants and collected pet and security deposits from them.

On August 2, 2016 the landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent to an adult who resides with the tenant.

The parties agreed that the tenant did not pay rent for October or November 2016.

Landlord's Evidence

The landlord submitted copies of receipts showing that the tenant paid \$2,000.00 on August 3, 2016 and \$900.00 on August 16, 2016. The landlord served the tenant with a letter indicating the payment of \$900.00 dated August 16, 2016 was for "use and occupancy only."

The landlord stated that on July 31, 2016 she received a text from the tenant, telling her to come by for the rent on the 3rd. The landlord stated that she went to the rental unit on August 1, 2016 to collect the rent, but the tenant was not home. The landlord went to the rental unit again on August 2, 2016 and on that date she served the notice to end tenancy for unpaid rent on an occupant of the house.

The landlord stated that the tenant paid her \$2,000.00 of the rent on August 3, 2016, and she informed the tenant that she was still pursuing the eviction. The landlord stated that she attended the rental unit on August 12, 2016, the effective date of the notice to end tenancy, but the tenant was not moving out. The landlord stated that on August 15, 2016 the tenant called and said that rent was ready and he would leave the cash on the deck. The landlord stated that she did not want him to leave the cash on the deck, and she made an appointment with the tenant to come and collect the rent from him at 8:00 p.m. The landlord stated that the tenant was not there. The landlord stated that she went to the unit again on August 16, 2016, received the \$900.00 payment, and served the tenant with the letter indicating that she was accepting the payment for use and occupancy only.

The landlord stated that she has received no further rent from the tenant. The landlord stated that on August 31, 2016 the tenant wanted to have the pet and security deposits put toward rent for September, but the landlord did not agree.

Tenant's Response

The tenant stated that he texted the landlord to come for the rent, and he paid her \$2,000.00 on August 3, 2016. The tenant stated that he could not withdraw more than that amount from his bank account at that time because his account had been hacked and was frozen. The tenant stated that he had a written agreement with the landlord to pay her the balance of the rent on August 12, 2016, and he kept calling her but she was nowhere to be found. The tenant stated that his account was unfrozen on August 12, 2016.

The tenant stated that when he spoke to the landlord he told her he would leave the \$900.00 on the table, and she said she was not going to pick it up from the table. The tenant stated that all of his roommates moved out at the end of August, and he had to pay them back their deposits, which came to almost \$3,000.00. The tenant stated that the landlord refused to give him back his deposits. The tenant stated that he paid the landlord \$2,900.00 in cash on September 1, 2016 but the landlord did not give him a receipt. The tenant stated that the landlord never gave receipts, and stated "my roommates who are here could testify" to that.

Analysis

I find that the notice to end tenancy dated August 2, 2016 is valid. The tenant did not pay the balance of outstanding rent until August 16, 2016. The evidence that the tenant submitted with his review application was not served on the landlord and was not admissible; therefore, I have no documentary evidence to show that the landlord had a written agreement with the tenant for him to pay the balance of the rent on August 12, 2016. I therefore find that the order of possession dated August 25, 2016 is valid.

Further, I found the tenant's evidence to be contradictory and lacking credibility. It is not clear to me how the tenant's bank account was "frozen" but he was able to withdraw \$2,000.00. It is not clear to me whether the tenant's roommates did or did not move out. The tenant complained that at the end of August he had to pay them back their deposits, "nearly \$3,000.00," and yet he was able to pay the landlord \$2,900.00 on September 1, 2016. The tenant did not provide any documentary evidence, such as bank statements, to support this claim.

On the other hand, the landlord's testimony was consistent and credible. The landlord included two receipts in her original evidence, which contradicts the tenant's statement that the landlord never issues receipts. I accept the landlord's testimony that the tenant asked to have the deposits put toward September rent, and when she did not allow it, the tenant did not pay rent for September 2016.

I therefore find that the landlord is entitled to lost revenue for September and October 2016. It is open to the landlord to make another application for lost revenue for November 2016.

Conclusion

I confirm the decision and order of possession dated August 25, 2016. The landlord may immediately take steps to enforce the order of possession.

I vary the decision dated August 25, 2016 to add a monetary award for lost revenue for September and October 2016. I order the landlord to retain the pet and security deposits totalling \$2,900.00, and I grant the landlord an order under section 67 for the balance due of \$2,900.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 3, 2016

Residential Tenancy Branch