



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, MND, MNDC, MNR, OPL, OPR, FF

Introduction

In the first application the tenant seeks to cancel a two month Notice to End Tenancy for landlord use of property and a ten day Notice to End Tenancy for unpaid September rent.

In the second application the landlord seeks an order of possession pursuant to either Notice, and a monetary award for unpaid September rent and occupation rent for October and November. He reserved to a later application a general claim for damage to the property.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant paid the September rent? If so, does it show that the landlord has a good faith intention of having a close family member occupy the rental unit? Is the landlord owed rent money?

Background and Evidence

The rental unit is a one bedroom basement suite in the landlord's home.

There is a written tenancy agreement. The tenancy started November 1, 2013 for a one year term and has continued on a month to month basis. The monthly rent is \$950.00, due on the first of each month, in advance.

The landlord issued a two month Notice to End Tenancy received by the tenant on August 26, 2016. The tenant thinks the landlord's real desire is to renovate the suite. The landlord admits he spoke to the tenant about renovations, but they were renovations in preparation for his parents, who live upstairs with him, to move to the basement suite and that is what his intention still is.

The tenant says that he paid the September rent by giving it, in cash, to someone at the landlord's front door, as is his habit. The landlord says he did not.

Analysis

Dealing with the matter of rent payment first, the general law is that a debtor (the tenant in this case) has the burden of proving payment to his creditor (the landlord).

The tenant has not done so here. The *Residential Tenancy Act* (the "*Act*") contains specific provision requiring a landlord to provide a receipt for cash rent payments. A tenant who decides to pay in cash can put himself at significant risk by failing to obtain a receipt for that payment.

The tenant has no receipt for payment here. In addition, his testimony about cash payment is too vague to be likely. He gave no details about when the payment was made nor to whom. He has lived in the rental unit for two years. It fair to say he would have a general idea of who was living upstairs and to whom he gave the cash. A person insistent that payment had been made would have provided such detail.

I find that the tenant did not pay the September rent. The ten day Notice to End Tenancy was a valid Notice. By operation of s. 46 of the *Act* this tenancy ended on September 24, 2016 and the landlord is entitled to an order of possession.

Had I found that the tenant did pay the September rent, I would have upheld the two month Notice in any event. The landlord's explanation for the Notice is believable and not inconsistent with him talking to the tenant about renovations beforehand.

The tenant has not paid September rent or any rent money since. The landlord is entitled to a monetary award for \$950.00 for September rent and \$1900.00 for occupation rent for the months of October and November 2016.

I award the landlord \$2850.00, plus recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$450.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$2550.00.

Conclusion

The tenant's application is dismissed. The landlord's application is allowed. He will have an immediate order of possession and a monetary order against the tenant for \$2550.00.

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 10, 2016

Residential Tenancy Branch