



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated and received on January 5, 2017.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord had sent evidentiary material to the tenant on January 19, 2017 by registered mail but the tenant had not retrieved her mail. None of the documents required prior notice on the tenant and, in any event, they were deemed to have been received by her under s. 90 of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Has the tenant failed to pay the \$1600.00 demanded in the Notice?

Background and Evidence

The rental unit is a three bedroom suite in a house. There is a second rental unit in the home. The landlord was living there but has now rented it out as well.

The tenancy started in February 2016. There is no written tenancy agreement but the parties agree the rent is \$800.00 per month, due on the first of each month. The landlord does not hold any deposit money.

The landlord testifies that the tenant did not pay September or December 2016 rent. The October rent had been forgiven in consideration of the tenant's payment of a utility bill.

The tenant admits she has not paid December rent (or January 2017 rent) but says she paid the September rent of \$800.00 to the landlord in cash. She did not get a receipt nor did she have any other evidence available to corroborate the payment.

The landlord points to a text from him to the tenant dated October 8, 2016 and her response, indicating she had not paid the September rent.

The tenant responds saying she paid it after that.

Analysis

As stated at hearing, the obligation to prove payment of rent initially falls to the tenant. She bears the initial burden of proof.

The *Act*, s.26, obliges a landlord to issue a receipt for rent paid in cash. It is the tenant's responsibility to trade a cash payment of rent for that receipt. A tenant who pays rent in cash but fails to obtain a receipt runs a significant risk of being unable to prove that payment.

I find that the tenant has failed to satisfy that burden in this case and that the September and December rents were not paid.

The ten day Notice in question was a valid Notice. By operation of s. 46 of the *Act* it has resulted in this tenancy coming to an end on January 16, 2017.

In these circumstances s. 55 of the *Act* mandates that the landlord be granted an order of possession. An order of possession will issue to the landlord accordingly.

Conclusion

The tenant's application is dismissed.

The landlord will have an order of possession.

This decision was rendered orally after hearing and 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: February 06, 2017

Residential Tenancy Branch