



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on January 16, 2017 and that the tenant signed in receipt of the package on January 17, 2017. Both parties agreed that the landlord served the tenant with the late documentary evidence package via Canada Post Registered Mail on January 25, 2017 and that the tenant signed in receipt of the package on January 28, 2017. The tenant stated that he had no issues in proceeding with the hearing as a result of the late documentary evidence submitted by the landlord. The tenant provided no documentary evidence. I accept the undisputed affirmed evidence of both parties and find that as both parties have attended and have confirmed receipt of the submitted documentary evidence. The tenant stated that there were no issues in proceeding with the landlord's application due to the landlord's late documentary evidence that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenant has resided in the rental unit for approximately 11 years in which the monthly rent of \$700.00 is payable on the 1st day of each month with no signed tenancy agreement. Both parties also agreed that the tenant paid a \$350.00 security deposit and that there was no condition inspection report for the move-in completed by the landlord.

The landlord seeks an order of possession for unpaid rent as the tenant failed to pay the January 2017 rent of \$700.00 that was due on January 1, 2017.

The landlord stated that on January 4, 2017 the 10 Day Notice to End the Tenancy for Unpaid Rent (the 10 Day Notice) dated January 4, 2017 was served to the tenant by posting it to the rental unit door. The landlord has submitted a copy of a proof of service statement confirming service in this manner. The 10 Day Notice states that the tenant failed to pay rent of \$700.00 that was due on January 1, 2017 and displays an effective end of tenancy date of January 17, 2017. The landlord stated that on January 18, 2017 the tenant paid the January 2017 rent of \$700.00 with an additional \$400.00 in advance for February 2017 rent.

The tenant provided undisputed affirmed testimony confirming that he was served with the 10 Day Notice as claimed by the landlord. The tenant clarified that he paid \$600.00 of the January 2017 rent on January 9, 2017 and that balance of \$100.00 on January 17, 2017.

The landlord confirmed that the tenant paid \$600.00 on January 9, 2017 and that the balance of \$100.00 was paid on January 17, 2017.

The tenant also stated that he had a verbal agreement with the landlord, F.C. that he would be able to pay the rent late by the 15th of the month. The tenant clarified that on the 15th he had a conversation with the landlord by telling him that the remaining \$100.00 would not be paid on time, but would be late. The tenant stated that the landlord agreed to accept the rent late at anytime.

The landlord stated that she was not aware of any agreement with the landlord, F.C. and could not comment.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed evidenced of both parties and find that the tenant paid \$600.00 on January 9, 2017 and that the balance of \$100.00 was paid on January 17, 2017.

The landlord accepted payment of rent on January 17, 2017 from the tenant after the issuance of the 10 Day Notice dated January 4, 2017 with a stated effective end of tenancy date of January 17, 2017. The landlord's evidence is that the tenant delivered the payment as rent. I have not been provided with any evidence that the landlord accepted this payment for the tenant's use and occupancy of the rental unit. I also find that I accept the undisputed evidence of the tenant that a verbal agreement was made with the landlord, F.C. to accept payment of rent late. The landlord was not able to dispute or comment on the claim of the tenant. I find that the landlord reinstated the tenancy by accepting the rent late and by having a verbal agreement with the tenant to accept rent late. As such, the landlord's application for an order of possession is dismissed.

Conclusion

The landlord's application is dismissed without leave to reapply based upon the 10 Day Notice dated January 4, 2017.

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: February 07, 2017

Residential Tenancy Branch