



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave independent affirmed testimony. The parties named on the application for dispute resolution were given the opportunity to question each other and the witness.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that an Order of Possession for unpaid rent should be granted?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on March 1, 2017 and expires on February 28, 2018 and the tenants still reside in the rental unit. The tenants in the basement suite of the rental home told the landlord that the tenants actually moved in on February 19, 2017 and the tenants paid a pro-rated amount of rent from February 21st to February 28, 2017. A copy of the tenancy agreement has been provided which specifies rent in the amount of \$1,500.00 per month but is silent on the day rent is due, however the landlord testified that it is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the

amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house which contains a basement suite which is also tenanted.

The landlord further testified that on March 6, 2017 he served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated March 6, 2017 and contains an effective date of vacancy of March 16, 2017 for unpaid rent in the amount of \$1,500.00 that was due on March 1, 2017. The landlord received \$1,500.00 cash from the tenants for the unpaid rent on March 22, 2017 but did not have a receipt book with him at the time, and issued a receipt later that night that stated that the money was being collected for use and occupancy only. A copy of the receipt has been provided.

The tenants could pay rent by cash, cheque or e-transfer, however during cross examination the landlord was asked when the tenants obtained an email address for the landlord, who replied that he must have sent it to the tenant by text message. He also testified that he resides in the downtown area of the City where there is a 24 hour concierge and the tenants have that address and could have mailed a cheque.

The tenants also failed to pay rent when it was due for April, 2017. On April 4, 2017 the landlord served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord received a text message from someone saying the rent was ready on or about April 19, 2017, but doesn't know who it was from. The landlord has 7 rentals in total and didn't recognize the phone number as that of the tenant. During cross examination the landlord testified that the text message he received on April 6 indicated who it was from asking the landlord how he wanted rent to be paid, but the landlord did not respond.

The landlord has also received complaints about the tenants.

The only tenant named on the Landlord's Application for Dispute Resolution is the only tenant who signed the tenancy agreement, although 4 tenants reside in the rental unit and whose names appear on the tenancy agreement. The tenancy agreement provided does not have a signature of a landlord.

The tenant testified that on February 15, 2017 the landlord was paid \$1,500.00, being \$750.00 for the security deposit and \$750.00 for a partial month of rent for February, but the tenants didn't move in until the 25th of the month.

On March 6, 2017 the tenant hadn't heard from the landlord about the payment of rent, and the tenant had to go out of town because her grandmother had passed away. The

tenant contacted the landlord while away and brought rent to the landlord upon return, but the landlord wanted cash. The tenant went through the concierge to give it to the landlord, but the landlord wasn't there. The concierge contacted the landlord, and he received the cash on either March 11 or 13, 2017 but the landlord said he didn't have a receipt book at the time, and that the notice to end the tenancy was given as a formality to the tenant's roommate. The tenant didn't receive a copy of the receipt until the landlord provided evidence for this hearing.

The tenant further testified that the landlord had not served the hearing package for this hearing and the tenant thought that the notice was cancelled because rent had been paid, so the tenant didn't file an application for dispute resolution to dispute the notice.

The tenant received 3 different registered mail items from the landlord: the Notice of Direct Request and Worksheet; the rent receipt dated March 22, 2017 with the Landlord/Tenant Fact Sheet; and a hydro bill. The tenant picked up a copy of the Landlord's Application for Dispute Resolution and notice of this hearing from the Residential Tenancy Branch.

The tenant received another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and disputed it. The hearing is scheduled for June 2, 2017 and the landlord has been served by registered mail recently.

The tenant further testified that the tenants have tried numerous times to pay rent, and there has been no opportunity to do so.

The tenant's witness testified that he is one of the tenants named in the tenancy agreement.

On March 6, 2017 the landlord gave the witness a notice to end the tenancy, and the tenants paid the rent instead of disputing the notice. The landlord had requested that the tenants pay rent for March by cash. The tenant and the witness went to the landlord's residence on either the 11th or 13th days of March, 2017 but the landlord wasn't there and the concierge had to page him. The landlord attended to meet them but didn't have a receipt to give the tenant. The tenant paid the landlord \$1,500.00 in cash.

The witness also testified that the tenant and witness tried to pay rent for April, 2017 but the landlord texted the tenant saying it's a police matter now and he has a police file number but wouldn't give it to the tenant or the witness. The landlord also said he had many witnesses and the tenants in the basement suite had issues. The landlord got it in his mind that he wants the tenants out so he hasn't accepted April's rent, and didn't

show up to collect it on April 1. The witness texted the landlord on April 4 or 6 saying the tenant had the rent money, not wanting to deal with the concierge, and asked how it should be paid, but the landlord didn't respond. On April 10, 2017 the witness sent a lengthy text message to the landlord. The landlord responded saying he was sorry it didn't work out and spoke about the hydro bill.

Analysis

Where a landlord seeks an Order of Possession for unpaid rent, the onus is on the landlord to establish that the tenants failed to pay rent within 5 days of serving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or dispute it. Once served with such a notice, a tenant has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the tenants did not dispute the notice, but claim that they paid the rent within 5 days. The parties agree that when the rent for March was paid, it was paid in cash and the landlord didn't have a receipt. The landlord has provided a receipt dated March 22, 2017, however the tenant testified that a copy wasn't given to her until served with evidence for this hearing. Both the tenant and the tenant's witness testified that rent was paid in full on March 11 or March 13, 2017, and the landlord testified that the notice was served on March 6, 2017. If it was paid on March 11, 2017, the notice is of no effect.

The law does not permit a landlord to accept cash without providing a receipt for this very reason: that the fact that the landlord received cash and the date it was received cannot be verified where those facts are in dispute. The tenant testified that she didn't get the receipt until served with evidence for this hearing, and the landlord didn't dispute that. It is very easy for a person to post-date a receipt and not provide it to the party from whom money was collected.

I also note that the landlord's testimony is that the tenants in the basement suite of the rental home told the landlord that the tenants actually moved in on February 19, 2017 and the tenants paid a pro-rated amount of rent from February 21st to February 28, 2017. The tenant testified that at the beginning, or prior to the beginning of the tenancy the landlord collected \$1,500.00, being \$750.00 for a security deposit and \$750.00 for a partial month of rent, and the landlord didn't dispute that. Seven or eight days does not constitute half a month.

I agree with the landlord that the tenants have an address and could have mailed a cheque, however I have reviewed the evidentiary material and note that there are 2 addresses for the landlord.

The landlord has also received complaints about the tenants, but did not specify what they were. The witness testified that the landlord got it in his mind he wants the tenants to move out so hasn't accepted April's rent, and hasn't attended to get it. I am satisfied that the landlord has an alternative reason for applying for an Order of Possession.

In the circumstances, I am not satisfied that the landlord has established when the rent was paid and whether or not the tenants paid it within 5 days of the issuance of the notice.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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: May 03, 2017

Residential Tenancy Branch