



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNSD, O, OPR, MNR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a monetary order for outstanding rent, and a request for recovery of the filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent and a request for a monetary order for \$1200.00.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the tenant has put on her application.

Section 2.4 of the rules of procedure states:

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case it is my finding that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with whether or not there is any rent outstanding, and whether or not to cancel or uphold the Notice to End Tenancy, and I dismiss the tenants remaining claims with liberty to re-apply.

Background and Evidence

The parties agree that this tenancy began on April 1, 2017 with a monthly rent of \$1200.00 due on the first of each month.

The landlord testified that the tenant failed to pay the April 2017 rent in the amount of \$1200.00, having given him cheque for that amount, which was not honored by the bank.

The landlord testified that the cheque was returned to him due to insufficient funds and, at that time, he served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent.

The landlord further testified the tenant has also failed to pay any rent for the month of May 2017, and therefore he is asking for an Order of Possession for as soon as possible and a monetary order for the outstanding rent totaling \$2400.00.

The landlord further testified that he is also requesting recovery of his \$100.00 filing fee.

The tenant testified that she has paid the full April 2017 rent because on April 28, 2017 she gave the landlord an envelope that had \$1400.00 in it, which was to cover the \$600.00 security deposit, the \$200.00 utility deposit, and \$600.00 of the April 2017 rent.

The tenant further testified that, she had previously given the landlord a post-dated cheque for \$1200.00 for the April 2017 rent, however she had asked him not to cash it, as she was planning to pay him in cash.

The tenant further testified that the landlord refused to give her the keys until she paid the full rent for April 2017 and therefore, on April 1, 2017, she paid the remaining \$600.00 in cash, to the landlord, again presented to him in an envelope, and at that time she received the keys to the rental unit.

The tenant further testified that she does not dispute that May, 2017 rent has not been paid, however that's because the landlord will not talk to her.

The tenant further testified that she has supplied a letter from a friend who on April 1, 2017 loaned her the money to pay the remainder of the rent, and the letter from another friend who saw her hand the rent/deposit envelope to the landlord on March 28, 2017

In response to the tenant's testimony the landlord testified that the only money that was paid to him on March 28, 2017, was a \$600.00 deposit, and he never received a \$200.00 utility deposit, nor did he receive \$600.00 towards the rent.

The landlord further testified that he did tell the tenant she could not have the keys until she paid the April 2017 rent, and therefore on April 1, 2017 she gave him the \$1200.00 cheque, which states right on it, April rent paid in full. Once he received that cheque he gave her the keys and at no time as any cash been exchanged for rent.

Analysis

It is my decision that the tenant has not met the burden of proving that any rent was paid to the landlord for the month of April 2017.

The tenant claims that she paid rent in two installments, \$600.00 cash in an envelope that was paid with her deposit on March 28, 2017, and a further \$600.00 cash in an envelope that was paid on April 1, 2017; however it's my finding that there is insufficient evidence to support the tenants claim that an extra \$800.00 was in the March 28, 2017 envelope, or that cash was in the April 1, 2017 envelope.

The tenant may well have borrowed money from a friend on April 1, 2017; however there is insufficient evidence to show that that money was ever paid to the landlord.

Further, a friend of the tenant may well have seen the tenant hand an envelope to the landlord on March 28, 2017, however again there is insufficient evidence to meet the burden of proving that there was any more than \$600.00 in that envelope.

It is my decision that I find the landlords version of events to be more plausible. The landlord has provided a copy of a cheque for the full April 2017 rent which was not honored by the bank, and I accept that this cheque was supposed to have covered the April 2017 rent, and that's why the landlord released the keys to the tenant on April 1, 2017.

It's my decision therefore that I will not cancel the Notice to End Tenancy and pursuant to section 55 of the Residential Tenancy Act I have issued an Order of Possession to the landlord.

Further, I also allow the landlords request for the full outstanding rent and therefore pursuant to sections 67 and 72 of the Residential Tenancy Act I have issued a monetary order for that outstanding rent and recovery of the filing fee.

Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenant.

I have issued a monetary order for the tenant to pay \$2500.00 to the landlord.

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The tenant's application for a monetary order is dismissed with leave to reapply.

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 24, 2017

Residential Tenancy Branch