



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, the landlord informed me that the tenant had paid rent for July and August 2017 and at the time of the hearing the tenant did not owe rent.

Issues to be decided

Did the landlord serve a valid notice to end tenancy? Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The tenancy started in April 2009. The monthly rent is \$600.00 due on the first of each month. A tenancy agreement was filed into evidence by the landlord. The tenant stated that he did not recall signing an agreement and he believes that the signature on the agreement filed into evidence is not his. The tenant stated that he had not been given a copy of the agreement at the start of tenancy and added that when he received it in the landlord's evidence package, is when he saw it for the first time.

The landlord was firm in his testimony that the tenant had signed the tenancy agreement at the start of tenancy. During the hearing, I reviewed other signatures by the tenant on his application and letters to the landlord. I found that there is no consistency in the various signatures and that they all differ from each other.

The rental property consists of a two level building that houses a total of three suites. The tenant occupies the second suite on the lower level. As per the tenancy agreement, the cost of utilities is not included in the rent and the tenant is required to pay a portion of the utility bill. The percentage of the tenant's share is not specified in the agreement. The tenant testified that his rent included utilities and stated that through the tenancy of eight years, he had never been asked to pay utilities nor had he ever paid any.

The landlord stated that the tenant was repeatedly late paying rent. The tenant agreed that over the eight years of tenancy he had paid rent late approximately six times. However he also stated that he would let the landlord know that he was going to be late and the landlord was always very accommodating. The tenant testified that he and the landlord had a very good relationship until May 2017 at which time the landlord's son started handling some of the landlord's affairs.

The tenant agreed that he failed to pay rent on July 01, 2017 and stated that on July 04, 2017, he informed the landlord that he had run into financial difficulty and would be getting his pension on the 27th of July, at which time he would pay rent. The landlord agreed that the parties spoke on July 04 and that the tenant had given him this information.

At this point the testimonies of the parties differed. The tenant stated that the landlord gave him permission to pay on July 27 as he had done in the past while the landlord stated that he did not give the tenant permission to pay rent for July on July 27, 2017.

On July 07, 2017, the landlord served the tenant with a notice to end tenancy for \$600.00 in unpaid rent. The tenant disputed the notice in a timely manner and paid rent on July 27 as he believed that he had the landlord's permission to do so. The tenant also paid rent for August 2017 on July 29, 2017. The landlord accepted both rents and provided the tenant with receipts.

In reply to my question, the landlord agreed that upon accepting rent he had not given the tenant any information about the status of the tenancy nor did he issue receipts for "use and occupancy only". The tenant stated that he believed that the tenancy was reinstated once he was all caught up on rent.

Attempts to mediate a settlement between the two parties were unsuccessful. The landlord was clear that he wanted an order of possession and the tenant was also firm on wanting the tenancy to continue.

Analysis

Based on the sworn testimony of the both parties, I accept the tenant's evidence in respect of the claim. The tenant's main evidence is that whenever he had financial difficulty and could not pay rent on time, the landlord was very accommodating and allowed him to pay rent late.

The tenant testified that on July 04, 2017, he informed the landlord that he would pay rent when he received pension on July 27, 2017 and the landlord agreed to allow him to do so. Even though the landlord denied having given the tenant permission to pay rent for July on July 27, 2017, in his testimony the landlord did not mention that he had informed the tenant that the tenant did not have his permission to pay rent late. The landlord stated that he just accepted the tenant's information and did not make any comments or arrangements for the next course of action.

I further find that the landlord accepted rent for July and August on July 27 and 29 respectively and provided receipts to the tenant. The landlord did not inform the tenant by way of notification on the receipts that the rent was accepted for use and occupancy only and also did not notify the tenant verbally or in writing that the tenancy was not reinstated.

Based on the landlord's testimony, I find that the landlord had condoned the tenant's late payments on at least six occasions during the eight years of tenancy and did not give the tenant any warnings that he was no longer going to do so. He also failed to inform the tenant that even though he had accepted rent for July and August 2017, the tenancy was not reinstated.

Accordingly, I find that after accepting multiple late payments of rent over the eight years of tenancy, without any repercussions, the tenant had no reason to believe that the landlord would take steps to end the tenancy for late payment of rent.

I further find that the tenant was not sufficiently informed, warned or put on notice that the landlord was no longer going to accommodate his financial situations and allow late payments of rent.

The tenant's main evidence is that the landlord has always been made aware of the breaches of late payment of rent by the tenant and has always given verbal permission for the breaches. The landlord agreed that he did not provide notice to the tenant that late payments were no longer acceptable but served the tenant with a notice to end tenancy instead.

I further find that the landlord gave the tenant reason to believe that the tenancy was reinstated when he paid rent for July and August. The landlord failed to notify the tenant that it was not. For these reasons, the notice to end tenancy is set aside

However, from now on, the tenant has been put on notice regarding the landlord's position on the late payment of rent and tenant must pay full rent on or before the first of each month.

The landlord has not proven his case and must bear the cost of filing his application.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: August 23, 2017

Residential Tenancy Branch