



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), pursuant to section 46 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord C.M. stated that both he and Landlord M.G. would be representing the interests of the landlord in this matter but that Landlord C.M. (hereafter the landlord) would be the primary speaker. I instructed the witness D.S. (the witness) to leave the room until they were called upon by the tenant to provide testimony.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) and evidentiary package which was personally handed to him on or about August 14, 2017. Pursuant to section 88 and 89 of the *Act*, I find the landlord has been duly served with these documents.

The tenant confirmed receipt of the 10 Day Notice which was posted to the door of the rental unit on August 04, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the 10 Day Notice.

The landlord confirmed that they did not submit any evidence.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant gave written evidence that this tenancy began on April 01, 2017, with a monthly rent of \$680.00 payable on the first day of each month. The landlord testified that a security deposit of \$340.00 is currently being retained in trust.

The tenant entered into written evidence the 10 Day Notice, dated August 04, 2017 for \$680.00 in unpaid rent that was due on August 01, 2017, with a stated effective date of August 17, 2017. The landlord testified that the rent owing on the 10 Day Notice is actually for May 2017. The tenant confirmed this to be true.

The tenant provided bank statements for the period from March 31, 2017 to August 01, 2017 showing withdrawals in the amount of \$680.00 for rent paid in each month.

The tenant also provided a receipt for \$680.00 of rent paid that indicates the name of the tenant and the rental unit on the receipt but no date when the payment was made.

The landlord testified that they have no recollection of any payment for rent being made by the tenant for May 2017. The landlord acknowledged that the tenant's bank records indicate a cash withdrawal of \$680.00 on May 02, 2017, but the landlord has no records of any rent payment being made by the tenant for May 2017.

The tenant testified that they moved into the rental unit in April of 2017. The tenant testified that, on May 02, 2017, he was made aware that the building manager at that time, "J.M.", was busy at another apartment block and would be there around supper time. The tenant testified that he went to the bank on this same day to get rent for J.M. and withdrew \$680.00 in cash which consisted of six 100 dollar bills and four twenty dollar bills. The tenant testified that he then went back to the apartment, paid the rent and got a signed receipt from J.M. with the amount of the rent paid and the rental unit number on it. At this time the landlord called upon their witness to provide testimony.

The witness gave affirmed testimony that he went with the tenant to get the rent money on May 02, 2017, and was with the tenant when the tenant paid J.M. the monthly rent for May 2017.

The landlord testified that they do not have a copy of the receipt in their evidence to confirm its validity. The tenant testified that they gave the landlord the same evidence package that was given to the Residential Tenancy Branch.

The landlord M.G. questioned the tenant why they took out cash for May 2017 rent, when rent for all other months were paid with a bank draft.

The tenant testified that he got cash that day because it is faster than getting a bank draft. The tenant testified that he drives a motorized wheelchair which has a difficult time going uphill when traveling to the bank and that he needs assistance sometimes. The tenant testified that J.M. is a difficult person to find and he wanted to make sure that he was back in time to pay the rent before J.M. left the apartment block again.

The landlord testified that J.M. no longer works for the landlord as J.M. recently quit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

I find that the landlord has not proven that the tenant did not pay the rent for May 2017. I find that J.M., who accepted the rent, is no longer with the company and was not called upon to provide their own affirmed testimony regarding whether the rent was paid or not. I further find that the landlord did not submit any tenant ledger showing the rent owing and paid for this tenancy.

Based on the evidence before me, I find that the landlord has *not* shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy. The tenant's application pursuant to section 46(4) of the *Act*, made within five days of receiving the 10 Day Notice, is successful. The 10 Day Notice of August 4, 2017 is cancelled.

Conclusion

The tenant is successful in their Application.

The 10 Day Notice of August 04, 2017 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: September 13, 2017

Residential Tenancy Branch