



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR (Landlord's Application)
 CNE, CNL, CNR, O (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the Landlords and the Tenants which were scheduled to be heard together in this hearing.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlords amended their application to request an Order of Possession based on a notice to end tenancy for cause. The Tenants applied to cancel a notice to end tenancy for: unpaid rent; cause; and the Landlords' use of the property. The Tenants also applied for "Other" issues.

Both parties appeared for the hearing and provided affirmed testimony. No issues were raised in relation to the service of the documents and documentary evidence provided by both parties prior to the hearing.

The hearing process was explained and no questions as to how the proceedings would be conducted were raised. The parties were given a full opportunity to present evidence, make submissions, and to cross examine the other party on the relevant evidence provided in this hearing.

Preliminary Matters

At the start of hearing the Tenants explained that they were in the process of vacating the rental unit and would be fully moved out by the end of September 2017.

Accordingly, the parties agreed that the Landlords would be issued with an Order of Possession effective for this date in order to affect the ending of the tenancy and satisfy the Landlord's request for an Order of Possession. As a result, I dismiss the Tenants'

Application to cancel the notices to end tenancy as these are now moot because the tenancy has been ended. The Tenants confirmed that there were no other issues left to be determined on their application apart from the Landlords' monetary claim for unpaid rent which I continued to deal with as follows.

Issue(s) to be Decided

Are the Landlords entitled to unpaid rent for July, August, and September 2017?

Background and Evidence

Both parties agreed that this tenancy started on November 15, 2016 for a fixed term of 6.5 months, after which time the tenancy continued on a month to month basis thereafter. A written tenancy agreement was signed and established rent in the amount of \$800.00 payable on the first day of each month. The Tenants paid a security deposit at the start of the tenancy in the amount of 400.00. The Landlords requested during the hearing to retain this in partial satisfaction of their monetary claim.

The female Landlord testified that the Tenants failed to pay rent on July 1, 2017. As a result, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") dated July 4, 2017. The 10 Day Notice shows a vacancy date of July 15, 2017 due to \$800.00 in unpaid rent.

The male Tenant explained that he attended the rental unit on or about July 28, 2017 to pay the outstanding rent on the 10 Day Notice. The male Tenant testified that he gave the Landlords' son cash in the amount of \$800.00.

The Landlords denied receipt of the July 2017 rent and explained that the Tenants had also failed to pay rent for August and September 2017. The Tenants did not deny that August and September 2017 rent was still unpaid at the time of this hearing.

The parties were then asked about the method of rent payment in this tenancy. The female Landlord explained that the Tenants paid rent for some months by e-transfer and for other months by cash. The Landlords acknowledged that they did not provide rent receipts for cash payments made by the Tenants. However, they did provide the Tenants with a rent receipt for the outstanding amount of June 2017 when that was eventually paid by the Tenants.

The Tenants acknowledged that they did get a rent receipt from the Landlords for June 2017 rent but denied getting anything for the cash payment made to the Landlords' son.

The female Tenant testified that the Landlords' son often collected rent during the winter months of the tenancy as the Landlords were away during this time. The male Tenant explained that they had verbally asked the Landlords for a rent receipt for the payment made on July 28, 2017 but instead they were served with a notice to end tenancy for the Landlords' use of the property.

Analysis

In this case, the Landlords filed a monetary claim against the Tenants. In general, the burden of proving a loss rests with the person who is claiming compensation for the loss.

When the only evidence a party relies upon consists of oral evidence provided during a hearing and this is disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim must fail. This does not necessarily mean that one party's word is believed over the others, but simply that in the interest of natural justice, a party's disputed and unsubstantiated testimony alone is not sufficient to support a decision in favour of the applicant.

Section 26(2) of the Act provides that if a tenant pays their rent in cash, the landlord **must** provide them with a receipt. Cash receipts can help to establish when a rent payment has *not* been made. When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has not been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy can significantly impair their ability to prove a tenant did not pay rent.

In this case, I find the Landlords failed to provide the Tenants consistently with rent receipts when rent was paid in cash which is a requirement of the Act. I find the Tenants have provided an equally probable version of the events and the conflicting evidence of both parties only allows me to conclude that in the absence of any supporting or corroborating evidence before me, the Landlords have failed to meet the burden to

prove their claim for July 2017 unpaid rent. As a result, I dismiss this portion of the Landlord's claim.

With respect to unpaid rent for August and September 2017, there was no dispute that this amount was owing to the Landlords. Therefore, the Landlords are awarded a total of \$1,600.00 in unpaid rent.

As the Landlords have been successful in this matter, I also award the Landlords the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is \$1,700.00. As the Landlords are holding the Tenants' \$400.00 security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlords to retain this amount in partial satisfaction of the claim awarded.

As a result, the Landlords are granted a Monetary Order for the remaining balance of \$1,300.00. This order must be served on the Tenants and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenants fail to make payment. Copies of the above orders for service and enforcement are attached to the Landlords' copy of this Decision. The Tenants may also be held liable for any enforcement costs incurred by the Landlords.

Conclusion

The Landlords are issued with an Order of Possession to end the tenancy for September 30, 2017. The Tenants have failed to pay rent. Therefore, the Landlords may keep the Tenants' security deposit and are issued with a Monetary Order for the remaining balance of \$1,300.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 25, 2017

Residential Tenancy Branch