



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on February 1, 2018.

At the outset both parties confirmed that the tenant had made rent payment of \$902.00 to the landlord and that no current arrears as of the date of this hearing. As such, the landlord seeks to cancel the monetary claim for unpaid rent. No further action is required for this portion of the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2008 on a month-to-month basis as per the submitted signed copy dated September 11, 2008. The original monthly economic rent was \$1,176.00 payable on the 1st day of each month and a security deposit of \$500.00 was paid.

Both parties confirmed that until December 2017 the tenant's rent was subsidized and her share of the rent was \$274.00 per month. Both parties also agreed that the tenant's rent was no longer subsidized as a result of a determination by the landlord and that rent was adjusted to full market rent of \$1,176.00.

The landlord seeks an order of possession for unpaid rent and recovery of the \$100.00 filing fee.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated January 5, 2018 in person on January 5, 2018 which states that the tenant failed to pay rent of \$902.00 that was due on January 1, 2018. The 10 Day Notice also sets out an effective end of tenancy date of January 15, 2018. The landlord has also provided a copy of a proof of service document confirming that the landlord served the tenant on January 5, 2018 with the 10 Day Notice in the company of a witness.

Both parties confirmed that the tenant made a payment of \$902.00 to the landlord for the outstanding amount. However, the landlord claims that payment was received on January 12, 2018. The tenant argues that payment was made to the landlord on January 9th or 10th by providing a cheque to the landlord via the building caretaker's mail slot.

The tenant also argues that all previous rent payments were paid via the landlord's automatic payment system. The tenant confirmed that she was advised that she was no longer paying subsidized rent, but instead the full market rent for January 1, 2018. The tenant stated that she assumed that the landlord would continue to apply the automatic payments for the entire rent. The landlord argued that automatic payments must be authorized by the tenant in advance. The tenant disputed this and stated that rent for February 2018 was paid through the automatic rent payment system without any authorization changes. The landlord was unable to provide any information to

clarity this, but confirmed that the entire market rent was paid by the tenant via the automatic rent payment system.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of both parties and find that the landlord properly served the tenant with the 10 Day Notice in person on January 5, 2018. Both parties confirmed that the tenant paid the arrears in full. The tenant claims that payment was made on January 9th or 10th. The landlord claims that payment was not received until January 12th. Neither party provided any supporting evidence of rent payment.

Both parties confirmed that rent is normally paid via the landlord's automatic rent payment system. The tenant argues that upon being notified of the change from subsidized rent to full market rent, she assumed that the landlord would automatically remove the amount as per the landlord's automatic rent payment system. The landlord has disputed this claim stating that changes need to be authorized by the tenant. The tenant has argued that the full market rent was paid through the landlord's automatic payment system without any authorization changes. The landlord confirmed the full payment of rent by the tenant via the landlord's automatic payment system, but was unaware of how the change took place.

I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord regarding the automatic rent payment system and find that the error occurred based a clerical error on the landlord's part. Both parties confirmed that February 2018 rent was paid via the same system with no authorization changes. As such, the 10 Day Notice dated January 5, 2018 is set aside. The landlord's application is dismissed without leave to reapply. The tenancy shall continue.

Conclusion

The landlord's application is dismissed without 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: February 22, 2018

Residential Tenancy Branch