



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT OLC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing. The landlord was represented by an articulated student. All parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was personally served the notice of dispute resolution on January 17, 2019. The landlord confirmed receipt of the notice of dispute resolution on this date. I find that the landlord was served with this notice on January 17, 2019, in accordance with section 89 of the Act.

The landlord testified that the tenants were personally served the landlord's evidence on February 19, 2019. The tenants confirmed receipt of the evidence via personals service on this date. I find that the tenants were served with this evidence on February 19, 2019, in accordance with section 88 of the Act.

Preliminary Issue – Tenants' Evidence

The tenants provided several documents to the Residential Tenancy Branch which they intended on relying upon as evidence at the hearing. However, they testified that they did not serve this evidence on the landlord.

Rule of Procedure 3.14 requires that the tenants serve any evidence they intend on relying on at the hearing to the landlord not less than 14 days before the hearing. As the tenants failed to do this, I exclude all documentary evidence submitted by the tenants. The tenants were permitted to give oral evidence as to the contents of these excluded documents.

Issue(s) to be Decided

Are the tenants entitled to:

- an order cancelling the Notice?
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement?
- recover their filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a one-year fixed-term tenancy agreement starting July 31, 2018. Monthly rent was \$1,850.00. The tenants paid a \$650.00 security deposit to the landlord. The landlord still retains this deposit.

On January 12, 2019, the landlord posted the Notice on the door of the rental unit and placed a copy in the tenants' mailbox. The Notice stated that the tenants owed \$1,850.00 as of January 1, 2019. The Notice listed the effective date as February 1, 2019. The tenants confirmed that they received the Notice on January 13, 2019.

The landlord's representative submitted that, at the time of service, the tenants had failed to pay any of the monthly rent for January 2019 and that the Notice was issued on this basis. The landlord's representative submitted that on January 18, 2019 the tenants e-transferred \$975.00 to the landlord. It is the landlord's position that a further \$875.00 remains due from the tenants.

The tenants testified that they actually e-transferred \$975.00 to the landlord on January 17, 2019, not January 18, 2019. Additionally, they testified that, on December 3, 2018, they pre-paid \$875.00 of January 2019 rent. It is their position that the Notice should

have stated that \$975.00 was due, and that, within five days of receiving the Notice, they had paid the amount owing.

The landlord's representative denies that any such pre-payment was made.

The tenants also testified that they usually pay monthly rent in cash, and that the landlord never provides them with receipts, despite the fact that they request them. They argue that this is a breach of the Act, and are seeking an order that the landlord comply with the Act, and provide them with receipts for any future rental payments in cash that they make.

The landlord's representative submitted that the landlord always provided receipts to the tenants when they made cash payments. She referred to a document submitted by the landlord into evidence that purported to be a number of receipts for cash payments for 2018 and 2019. She referenced the December 2018 receipt, which indicated that \$1,800.00 in monthly rent had been paid (I note that the landlord has not pursue a claim for underpayment of rent of \$50.00 for December 2018).

The tenants testified that they had only received these receipts with the landlord's evidence package in February 2019, and that they had not been provided to them at the time they made cash payments.

Towards the end of the hearing, the landlord's representative stated (following several questions from me, made pursuant to Rule 7.23, regarding the circumstances under which the landlord issued receipts) that the receipts entered into evidence were not actually copies of receipts that were provided to the tenants at the time they paid the rent, but rather were ones made by the landlord in January 2019. This was the first time the landlord's representative had suggested that the receipts in evidence were anything other than copies of the actual receipts provided to the tenants at the time they made cash rent payments.

When asked where the copies of the actual receipts were, the landlord's representative responded they were with the tenants. When asked why the landlord did not submit copies of the actual receipts into evidence, the landlord's representative did not answer the question, instead she restated the landlord's position that he had always provided copies of receipts to the tenants upon receipt of cash payments.

Analysis

Purported Receipts

It is troubling that, almost one hour into a hearing, and only after my questioning did the landlord's representative advise me that the documents purported to be "receipts" entered into evidence were, in fact, non-contemporaneously made documents.

Part of the value of having receipts entered into evidence is that they fall under the "business records" exception to hearsay rule. Put simply, as they were made in the course of doing business, and not in the light of litigation, the truth of their contents can be accepted (that is, they may act as definitive proof of the amount of funds received by the landlord).

In this case, as the "receipts" were not made contemporaneously with the payment of rent, they are of no probative value. Additionally, by presenting them as genuine, the landlord does actual harm to the fact-finding process, by causing confusion as to what actually transpired.

I will not go so far as to make a finding that the landlord attempted to deliberately mislead me by submitting the "receipts" into evidence. It is possible their inclusion in the evidence package was simply a misguided attempt to demonstrate what rent was paid by the tenants, and what was not paid (if this is the case, in the future, a table containing this information is preferable).

Based on the foregoing, I assign no weight whatsoever to the "receipts" submitted into evidence by the landlord.

Copies of the contemporaneously-made receipts (if they exist) ought to be within the possession of the landlord. However, these were not submitted into evidence. Accordingly, I find that the landlord failed to provide copies of receipts for cash rental payments to the tenants, in violation of section 26(2) of the Act, which states: "A landlord must provide a tenant with a receipt for rent paid in cash."

Pursuant to section 62(3), I order that the landlord provide a receipt to the tenant for each subsequent cash payment of rent made by the tenant.

Validity of the Notice

Section 90 of the Act states:

When documents are considered to have been received

90 A document given or served in accordance with section 88 or 89, unless earlier received, is deemed to be received as follows:

[...]

- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

The tenants testified that they received the Notice on January 13, 2019. I find that, in accordance with sections 88 and 90 of the Act, the tenants were served with the notice on January 13, 2019.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must prove that the tenants failed to pay the January 2019 rent. The landlord has provided oral evidence that the tenants failed to do so, and \$975.00 remains outstanding. The tenants testified that they paid the entirety of it by January 17, 2019.

Section 46(5) of the Act states:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

It is the tenants' position that on January 13, 2019, only \$975.00 was owed as overdue rent (as \$875.00 was prepaid in December), and as they paid this amount within five days of receiving the Notice. Accordingly, the Notice should be cancelled.

The landlord denies any prepayment occurred, and argued that \$875.00 remains owing. Accordingly, the landlord argued that the tenants are conclusively presumed to have accepted that the tenancy ended by operation of the section 46(5).

The landlord bears the onus to prove that rent remains outstanding. He has provided no documentary evidence in support of this. He provided receipts which he acknowledged were created for this hearing and not issued to the tenants in December 2018, the time when the tenants allege they prepaid a portion of January's rent. The landlord has not submitted any contemporaneous receipts, bank records or ledgers which show the deposit or receipt of the tenants' cash rent payments (he did submit account records of the tenants' e-transfer payments, something the tenants testified they did from time to time). I have only the landlord's testimony, which I must weigh against the tenants'.

In light of the aforementioned issue regarding the purported "receipts", I prefer the tenants' version of events to that of the landlord's.

I find that the landlord has failed to discharge his evidentiary burden to show that the tenants have failed to pay a portion of January's rent.

I order that the Notice is cancelled.

As the tenants have been successful in their application, they are entitled to recover their filing fee (\$100.00) from the landlord. Pursuant to section 72(2) of the Act, I order that the tenants may withhold this amount from the next rent payment.

Conclusion

Pursuant to section 46, I order that the Notice is cancelled.

I order that the landlord provide a receipt to the tenants each time they make a monthly rental payment in cash.

Pursuant to section 72, I order that the landlord pay the tenants their filing fee (\$100.00) and I order that the tenants may withhold this amount from a subsequent rent payment.

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: March 7, 2019

Residential Tenancy Branch