



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing the Application for Dispute Resolution. With the consent of both parties, the Application for Dispute Resolution was amended to correct the Landlord's legal name.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask questions, and to make submissions to me.

The Tenant submitted one document to the Residential Tenancy Branch, a copy of which was not served to the Landlord. As it was not served to the Landlord it was not accepted as evidence for these proceedings. The Landlord submitted no evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and is the Tenant entitled to recover the fee for filing the Application for Dispute Resolution?

Background and Evidence

With the assistance of the interpreter, the Landlord stated that the tenancy began on November 02, 2012 and that the Tenant moved in on November 03, 2012. The Applicant Tenant stated initially stated that the tenancy began on November 24, 2012; shortly thereafter he amended that statement to say that they moved into the rental unit on November 24, 2012 but the tenancy actually began on November 02, 2012; and much later in the hearing he stated that the tenancy began on December 01, 2012.

The Landlord and the Tenant agree that they have a verbal tenancy agreement that requires the Tenant to pay monthly rent of \$1,600.00 by the first day of each month.

The Landlord and the Tenant agree that the Tenant paid \$5.00 in cash on November 02, 2012; \$545.00 in cash on November 03, 2012; \$250.00 in cash on November 15, 2012; \$200.00 in cash on November 22, 2012; and that no receipts were provided for any of those payments. The Applicant Tenant stated that he also paid \$450.00 in cash on November 26, 2012, for which he received no receipt. With the assistance of the interpreter, the Landlord stated that no other rent was paid in November. The Tenant stated that all of the payments made in November were for December's rent.

The Landlord and the Tenant agree that the Tenant gave the Landlord a money order for \$500.00 in December. The parties also agree that the Tenant paid \$1,600.00 in rent for January of 2013.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy was personally served to the Tenant on December 25, 2012. Although the Notice was not submitted as evidence, the parties agree that the Notice was signed and dated; that it declared the Tenant must vacate by December 30, 2012; and that it declared that the Tenant owes \$2,500.00 in rent. With the assistance of the interpreter, the Landlord stated that \$800.00 of this debt is for an unpaid security deposit, rather than rent. The Tenant acknowledged that a security deposit has not been paid.

Analysis

After hearing the disputed testimony, I find that this tenancy began on November 02, 2012. I favour the testimony of the Landlord over the evidence of the Tenant in this regard, because the Landlord's testimony was direct and consistent. Conversely, the Tenant's testimony appeared confused and uncertain, and he provided three different start dates.

In determining that the tenancy began on November 02, 2012, I was influenced by the undisputed evidence that rent was paid on a variety of dates between November 02, 2012 and November 22, 2012. I find that paying rent in November corroborates the Landlord's version of events, as Tenant's do not typically pay rent in advance in this manner.

In determining that the tenancy began on November 02, 2012, I was influenced by the Tenant's testimony that he has now paid a total of \$3,550.00 in rent. In the event the tenancy actually began on December 01, 2012, as the Tenant contends, the Tenant would have overpaid his rent for the period between December 01, 2012 and January 31, 2012 by \$350.00. I find the rent paid does not support the version of events provided by the Tenant in regards to the start date of the tenancy.

As I have determined the tenancy began on November 02, 2012, I find that the Tenant was obligated to pay pro-rated rent for November, in the amount of \$1,546.57. On the basis of the undisputed evidence, I find that the Tenant paid \$1,000.00 in rent in November, leaving a balance of \$546.57.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will 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 never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made. In these circumstances the Landlord's failure to provide receipts for cash payments made during this tenancy has significantly impaired the Landlord's ability to prove that the Tenant did not pay rent of \$450.00 in cash on November 26, 2012. The Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate the claim that the Tenant did not pay \$450.00 on November 26, 2012. I therefore find that the Landlord has failed to establish that this amount was not paid on November 26, 2012 and that this alleged payment must be applied to the rent arrears from November, leaving a balance of \$96.57.

On the basis of the undisputed evidence, I find that the Tenant paid \$500.00 in rent for December. As the Tenant was obligated to pay \$1,600.00 in rent for December, I find that the Tenant still owes \$1,100.00 in rent for December of 2012.

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due. As the Tenant did not pay rent when it was due, I find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy.

The Landlord did not request an Order of Possession at the hearing.

Conclusion

I find that the Tenant's application is without merit and I dismiss the Tenant's application to recover the fee for filing an Application for Dispute Resolution.

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: January 24, 2013

Residential Tenancy Branch

