



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNSD, OLC, RR, OPR, MND, MNR, FF

Introduction

In the first application the landlord seeks an order of possession pursuant to the Notice, a monetary award for unpaid August rent and loss of September and October rental income and damages for damage to a door and siding at the premises.

In the second application the tenants seek to cancel a ten day Notice to End tenancy dated August 1, 2014, an order that the landlord comply with the law and the tenancy agreement and a rent reduction for repairs or loss of services.

The parties agreed that the validity of the eviction Notice was of primary importance. It was my determination that the other claims: the tenant's claims for compliance and a rent reduction and the landlord's claim for damage, were not directly related to that issue and that time would not likely permit evidence relating to all claims to be heard today, nor within a reasonable time frame after today. At hearing I dismissed the other claims with leave to re-apply. The tenants paid no filing fee. I suggest that the Residential Tenancy Branch waive the landlord's filing fee if she re-applies for the remainder of her claim.

The question of rent owing is a related issue and was considered at this hearing.

During the initial stages of the hearing the attending tenant requested an adjournment of the hearing so that her co-tenant Mr. R. could attend. He was at work. Given that the tenants made their claim August 14, 2014, and the landlord made her claim August 20th, it was my view that they have had sufficient time to arrange their schedules to attend. The request for an adjournment was denied.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that the tenants did not pay or tender August rent, thus justifying the Notice? What rent, if any, is due?

Background and Evidence

The rental unit is a two bedroom basement suite. The landlord and her family live upstairs in the main house. The tenancy started in June 2014 on a month to month basis. The rent is \$850.00. The landlord holds a \$425.00 security deposit. The written tenancy agreement calls for a \$200.00 pet damage deposit. The landlord says it has not been paid. The tenancy agreement indicates “n/paid.”

The June rent and security deposit were paid to the landlord’s agent Mr. H. B. when the tenancy agreement was made. For the July rent, the tenant Ms. V. walked upstairs and paid the landlord cash.

The landlord’s husband testified that the August rent was not paid on the first of the month. He says on August 4th he left a note on the door and text messaged the tenants about it afterward.

The tenant Ms. V. admits receiving the text message on August 5th. She says she went to the landlord’s door on August 7th and offered the rent in cash to the landlord. She says the landlord declined the money and told her that someone else was moving in. She says that on August 19th the landlord came to her door and again refused to accept the rent. She says she has also tendered the September and October rent as it came due but was again refused.

On September 1st the tenants appear to have been briefly denied possession when the landlord apparently changed the locks, (an issue not being dealt with at this hearing). The tenant Ms. V. testified that she again tendered the rent to the landlord on this occasion.

In response to this evidence the landlord denies being offered any rent after July.

Mr. S., a co-worker with the landlord’s husband, testified that he spoke to the tenant Ms. V. in early August about moving out. Contrary to the tenant’s evidence he denied she mentioned trying to pay the rent.

Analysis

It is a general rule that the burden of proving payment of a debt is on the debtor. In the case of a landlord and tenant relationship the initial burden of proof is on the tenant to establish, on a balance of probabilities, that rent has been paid. No doubt that is one of

the reasons the *Residential Tenancy Act* requires a landlord to provide a receipt for rent.

A landlord who has refused the rent, cannot, in fairness, issue a Notice to End Tenancy for its non-payment.

In this case I find the evidence to be equally divided. The tenant says she did tender rent. The landlord says she didn't though asked. The tenant has failed to satisfy the burden of proof and I dismiss her claim to cancel the ten day Notice to End Tenancy. As a result of the Notice and the operation of s. 46 of the *Act*, this tenancy ended on August 17, 2014.

Similarly, the tenant has failed to show that any pet damage deposit was paid.

It is not disputed that the August, September or October rent has not actually been paid.

Conclusion

The tenants' application is dismissed. The landlord will have an order of possession. I award the landlord \$850.00 for unpaid August rent plus \$1700.00 for loss of September and October rental income and recovery of the \$50.00 filing fee. I authorize the landlord to retain the \$425.00 security deposit in reduction of the amount awarded. The landlord will have a monetary order against the tenants for the remainder of \$2175.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 13, 2014

Residential Tenancy Branch

