



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OLC, OPR, MNR, MNSD, MNDC, FF

Introduction

In the first application, by filing number, the tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated February 21, 2015. The Notice claims that the tenant has failed to pay January and February 2015 rents. The tenant also seeks a compliance order that the landlord provide receipts for rent paid.

In the second application the landlord seeks an order of possession pursuant to the Notice and a monetary award for unpaid rent for January, February and March 2015, totalling \$6600.00. He also claims money for "damage or loss" under the law or the tenancy agreement, however that claim was not particularized in the application nor referred to at hearing.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant paid the January and February rent as he alleges?

Background and Evidence

The rental unit is one of three houses located on a farm. The tenancy began in February 2014. The monthly rent is \$2200.00. The landlord holds an \$1100.00 security deposit.

This is not the first dispute hearing between these parties. In the related file noted on the cover page of this decision, the tenant had applied earlier in the year to restrict the landlord from coming onto a portion of the farm that the tenant considered to be included in his tenancy. It was determined by the arbitrator in that hearing that this tenancy did not include the disputed farm portion. The tenant applied for review of that decision but, in a review decision after this hearing, dated March 26, 2015, his application was refused.

The tenant testified that he did not personally pay the rent to the landlords for the months in question. He is often away on his job and left the matter of rent payment to another occupant, possibly his sub-tenant, Mr. F.W. They have an arrangement where Mr. F.W. contributes \$600.00 to the \$2200.00 rent.

The tenant says that in both January and February he gave Mr. F.W. \$1600.00 in cash to apply to the rent.

Mr. F.W. testified that on or about January 8th or 9^h the landlord called and came by for the rent. Mr. F.W. says he paid in cash. The landlord counted it through the car window. Mr. F.W. says that the landlord did not give a receipt saying that he'd forgotten his receipt book and saying that he would give the tenant a receipt later.

Mr. F. W. testified that he paid the February rent in February in the same manner. The landlord called ahead and came to the door this time. Mr. F.W. gave him the cash and the landlord counted it. Again, the landlord said he didn't have his receipt book would give a receipt to the tenant later.

Mr. F.W.'s two daughters, ages fifteen and eighteen, testified separately from each other giving identical evidence that they were present on both the January and February occasions when the landlord came to collect the rent. They each saw the landlord count out the money and heard the landlord say he had no receipt book with him.

The landlord testified that he always gave receipts for rent and produced receipts from past rent payments. Mr. F.W. admitted that he had paid the November and December rents in the same manner but that on those occasions the landlord contemporaneously provided a receipt to him.

The landlord's daughter, age sixteen, testified that she had spoken to the tenant about the January rent and that he had told her he'd pay when he returned from his job. She says the February rent wasn't paid either and that she texted the tenant on February 15 asking for the rent but got not response. She says she made calls to him but there were no answers. She says her father goes to the farm every weekend.

Each side gave evidence about whether the landlord farmed the land last year. That is not an issue before but it was argued that it was relevant to the determination of credibility. I find that it is of little assistance on that point.

Analysis

The resolution of this dispute balances on the credibility of the parties.

After considering all the relevant evidence I am unable to prefer one sides' story over the other.

It should first be pointed out that a tenant paying rent by cash takes a significant risk of being unable to prove payment. For that reason s.26(2) of the *Residential Tenancy Act* (the "Act") requires tht a landlord provide a receipt for cash rent. A receipt may take the form of a formal receipt from a receipt book or merely an acknowledgement on scrap of paper.

The tenant's roommate and his daughters present a consistent version of events indicating that the rent was paid. Needless to say, though, Mr. F.W. has a self interest. If he did not pass the rent money to the landlord he saves himself the \$600.00 each of the months in question and is richer by \$1600.00 with the contribution from the tenant.

Mr. F.'s daughters have a filial connection with him that lessens the weight of their credibility. Each provided a consistent version of the payments and that is weighty evidence, however it was not so elaborate a story that it could not have been rehearsed.

The question remains why the landlord would not provide Mr. F. with a receipt for either the January or February rent but send it to the tenant, when he had provided Mr. F. with a receipt for the previous two months. As well, the landlord was making what appeared to be his regular rent collection rounds for this tenant and others on the property. It is unlikely he would neglect to bring his receipt book on both occasions.

The question also remains why Mr. F. or certainly the tenant himself did not follow up with and email or some other communication, seeking to obtain a receipt for either the January or the February rent.

The parties were in a dispute about the extent of the rented premises at the relevant times. It is not out of the realm of the possible that the tenant and Mr. F. were withholding rent pending determination of that argument.

It is also possible that the landlord was "setting up" the tenant by purposely failing to provide a receipt for the very purpose of issuing the ten day Notice in question and evicting a "problem" tenant. If that were the case then why didn't the landlord issue the Notice for non-payment in January? Why did he wait unit February 21st?

When the evidence is equally divided as here, the adjudicator must fall back to the question of who bears the onus or burden of proving that rent was paid. By his claim the landlord asserts non-payment. The law does not require him to prove a negative. Rather, the burden of proof of a fact, payment of rent in this case, falls to the one asserting it; the tenant.

With the evidence on payment being divided, I find that the tenant has not satisfied the burden of proving the rent payments were made.

As a result, I find that the landlord did not receive the January or February rents and that the ten day Notice to End Tenancy for those non-payments was a valid Notice. It has caused this tenancy to end by operation of s.46 of the *Act*. The tenancy ended on March 4, 2014 and the landlord is therefore entitled to an order of possession.

The landlord is entitled to recover those rents and the rent for March 2015, as claimed, plus recovery of the \$100.00 filing fee.

I dismiss any claim the landlord might have raised for other “damage or loss” as none was alluded to in either the particulars of the claim or at hearing.

Conclusion

The tenant’s claims to cancel the ten day Notice and for an order that the landlord provide rent receipts is dismissed.

The landlord’s claim for an order of possession and a monetary award of \$6600.00 plus the \$100.00 filing fee is allowed.

I authorize the landlord to retain the \$1100.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$5600.00.

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: March 30, 2015

Residential Tenancy Branch

