



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute codes OPR MNR FF

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenant for review of a decision dated September 28, 2018. In the original decision, the landlord was granted an order of possession. The tenant was found to have been conclusively presumed to have accepted the end of the tenancy as he failed to pay rent within 5 days of a 10 Day Notice to End Tenancy (10 Day Notice) being served or file an application to dispute the Notice. In the original hearing, the landlord had withdrawn her application for monetary compensation for unpaid rent so no monetary award was issued.

The tenant applied for a review which was granted on the grounds that he was not served with the original Notice of Hearing. The original decision and orders were subsequently suspended by way of a review consideration decision dated October 12, 2018 pending the outcome of this review hearing.

As the landlord withdrew her application for monetary compensation, I find it is not appropriate for me to re-open that aspect of the landlord's application in this review hearing. As such, this decision will only deal with the issue of the order of possession which was granted in the original decision and subsequently suspended in the review consideration decision. The landlord is at liberty to reapply for the monetary aspects of her original application.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Should the original decision and order granting the landlord an order of possession dated September 28, 2018 be confirmed, varied or set aside?

Background and Evidence

The tenancy began in early 2017 with a monthly rent of \$800.00 payable on the 1st day of each month.

The landlord testified that on July 20, 2018 she personally served the tenant with the 10 Day Notice. The tenant acknowledged receipt of the 10 Day Notice on this day. The Notice indicates that the tenant failed to pay rent in the amount of \$800.00 that was due on July 1, 2018.

The landlord testified that the tenant has not paid any rent for July, August, September, October and now November 2018. The landlord submits that the cancelled cheque document submitted by the tenant for the alleged July 2018 rent payment is not date stamped until August 27, 2018. The landlord submits that this document only shows that a stop payment was put on the cheque and it does not prove that a cheque was provided to the landlord.

The tenant testified that he sent a cheque for July 2018 rent to the landlord by mail on June 24, 2018. He testified that he has also attempted to make payments for rent for August 2018 and following months in person to the landlord but she has refused to accept the payments. The tenant submitted that at the beginning of the tenancy he always paid by cash but later started paying by cheque due to previous issues with the landlord. He then started to mail cheques to the landlord. After August 2018 onwards he attempted again to pay in person as the landlord said she never received the mail containing the July 2018 rent. The tenant submits that the landlord has made previous unsuccessfully attempts to end the tenancy and refused the rent payments in order to attempt to end the tenancy again.

The tenant testified that he stopped payment on the cheque dated June 24, 2018 (for July 2018 rent) on August 27, 2018 in order to stop his subsidy cheques which he was still receiving. The tenant testified that he did not dispute the 10 Day Notice as he was sick with pneumonia at the time and because he had sent the cheque in the mail prior to the notice being served.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

The tenant acknowledged being served with the 10 day Notice on July 20, 2018. The landlord issued the tenant the 10 Day Notice as the rent payment for July 2018 had allegedly not been received.

After being served with the 10 Day Notice, if the tenant believed the 10 Day Notice was without grounds, the tenant should have filed an application to dispute the Notice within five days.

Alternatively, the tenant could have immediately put a stop payment on the June 24, 2018 cheque and delivered a new cheque to the landlord within the five day period. The tenant submitted no evidence that he ever attempted to replace the June 24, 2018 cheque. The tenant provided testimony of allegedly attempting to pay future rent payment but not for replacing the cheque for the July 2018 rent.

Further, I find the tenant's testimony that he waited until August 27, 2018 to put a stop payment on the June 24, 2018 cheque to cancel his subsidy to be not very plausible. The tenant was still residing in the rental unit and he still would legally owe rent to the landlord so it is not likely that he would discontinue his subsidy payments. I find it would have been more reasonable for the tenant to immediately put a stop payment and replace the cheque or file an application to dispute the 10 Day Notice if he felt the landlord was just not accepting the rent payment in order to end the tenancy. The tenant did neither of these two things.

Therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and the landlord is entitled to an Order of Possession.

Conclusion

The original decision and Order of possession issued on September 28, 2018 are confirmed. 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: November 22, 2018

Residential Tenancy Branch