



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, RR

Introduction

This hearing dealt with cross applications. The landlord had applied for an Order of Possession for unpaid rent. The tenant had applied to cancel a *Notice to End Tenancy for Unpaid Rent* and for authorization to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with notification of the landlord's application on March 28, 2009. The landlord testified that he was not served with notification of the tenant's application and had no knowledge of it. I was satisfied that the landlord served the tenant with notification of the landlord's application and proceeded to hear from the landlord without the tenant present.

As I heard that the landlord was not served with the tenant's application and the landlord was only prepared to deal with the landlord's application, I dismiss the tenant's application with leave to reapply.

Issues(s) to be Decided

Has the landlord established an entitlement to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that the tenancy commenced approximately 16 years ago and that the tenant is required to pay rent of \$260.00 on the 1st day of every month. The landlord testified that the tenant failed to pay March 2009 rent when due and the landlord served the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on March 5, 2009. As evidence for the hearing, the tenant had provided receipts issued by the landlord showing that March rent was paid by the tenant on March 30, 2009. The

tenant also provided a receipt showing that he paid April 2009 rent on March 30, 2009. The landlord confirmed that he issued the receipts and accepted rent for May 2009 on April 27, 2009. The receipts do not indicate that the landlord was accepting payments for use and occupancy only. The landlord did not provide a copy of the Notice as evidence for the hearing.

The landlord also testified that he wishes to end the tenancy for reasons that are consistent with cause; however, to date, the landlord has only issued Notices to End Tenancy for unpaid rent.

Analysis

Having heard and seen evidence that the landlord did not inform the tenant that rent was being accepted after the effective date of the Notice for use and occupation only and the tenant had applied to cancel the Notice to End Tenancy for unpaid rent I find that the landlord re-instated the tenancy.

Even if I had found that the tenancy had not been re-instated, in the absence of a copy of the Notice to End Tenancy served upon the tenant, I would not be able to verify the validity of the Notice and I could not provide the landlord with an Order of Possession. Therefore, I dismiss the landlord's application for an Order of Possession for unpaid rent.

With respect to the other tenancy issues raised by the landlord, since the landlord has not yet served the tenant with a *1 Month Notice to End Tenancy for Cause* and the landlord did not make an application for an Order of Possession for cause, it is not before me to make a decision about issues other than non-payment of rent.



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Conclusion

The landlord's application for an Order of Possession for unpaid rent is dismissed and the tenancy continues.

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: May 15, 2009.

Dispute Resolution Officer