

DECISION

Dispute Codes CNC RP RR FF O

Preliminary Issues

The Tenant testified that he did not receive a copy of the Landlord's evidence.

The Landlord provided the courier company name, weigh bill number, and phone number of the company she hired to deliver her evidence to the Tenant on June 25, 2009.

I called the courier company and they confirmed that the package was brought in by the Landlord and was delivered to the Tenant's address.

I note that the Tenant referred to a document in his testimony, which was a photo copy of the June 6, 2009 bank receipt / Collection Request dated June 6, 2009 and his June 2009 rent cheque, which was sent to him by the Landlord in the evidence package that the Tenant testified he did not receive.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, and to obtain an Order to reduce rent for repairs, Order the Landlord to make repairs to the rental unit, for harassment suffered by the Tenant from the Landlord and her family and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail to the Landlords on May 22, 2009.

Both the Landlord and Tenant appeared, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Tenant proven his reasons to obtain an Order to cancel a notice to end tenancy for cause under Section 47 of the *Residential Tenancy Act*, and is the Tenant entitled to an Order to allow him to deduct the cost of repairs from his rent while ordering the Landlord to complete repairs to the rental unit pursuant to Sections 32, 65, 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began July 1, 2006 with monthly rent payable on the first of each month in the amount of \$1,200.00. The Tenant paid a security deposit of \$600.00 and a pet deposit of \$200.00 on June 30, 2006.

The Landlord presented her documentary evidence advising that after the 1 month notice to end tenancy was issued to the Tenant May 14, 2009, they did not receive payment for June 2009 rent until June 6, 2009.

The Landlord testified that the Tenant has paid rent late during the months of May, June, July, August, November, and December 2008 and January, February, March, April and May 2009. The Landlord advised that because she deals with the same financial institution that the Tenant does, when she goes into the bank to deposit the Tenant's rent cheque, the bank advises her that they cannot take the deposit if there is not enough money to cover the cheque in the Tenant's bank account. The Landlord stated that this causes her to have to return to the bank on several occasions to try and get a day when there are funds in the account to deposit the rent payment.

The Landlord advised that the 1 Month Notice to End Tenancy for Cause was issued to the Tenant on May 14, 2009 and delivered to the Tenant, in person, by the Male Landlord on May 14, 2009. The Tenant confirmed receipt of the notice.

The Landlord stated that it is very difficult to deal with the Tenant because he won't speak with them via telephone and will only communicate via e-mail. The Landlord referred to the copies of e-mails she has submitted in her evidence and requested that an Order of Possession be issued effective July 15, 2009.

The Tenant testified and confirmed that he has paid his rent late because he is suffering financial hard times, since about December 2008, but that he had a verbal agreement with the Male Landlord to allow the Tenant to pay the rent late. The Tenant confirmed that he did not submit evidence in support of this agreement, and that he did not know that he was supposed to supply evidence in support of his application.

The Tenant confirmed that he did not supply evidence in support of his claim that the deck was not repaired or that the Landlord and her family have been harassing him.

Analysis

Order of Possession - I find that the Tenant has failed to support his request to cancel a Notice to End Tenancy and that the Tenant is in contravention of Section 26 of the *Act* which stipulates that a Tenant must pay rent when it is due under the tenancy agreement. I find that the 1 Month Notice to End Tenancy issued May 14, 2009 is valid and of full force and effect.

The Landlord has requested an Order of Possession effective July 15, 2009 and after closer review, I find that while the landlord has met the requirements pursuant to Section 55(1)(a) of the *Act* to request the Order of Possession, the Landlord has cashed a post dated cheque for a rent payment for the full month of July 2009. Based on the testimony and evidence before me, I deem the July 2009 rent payment received by the Landlord from the Tenant, to be for the Tenant's "use and occupancy" for the entire month of July 2009.

Order Landlord to Make Repairs and Allow Tenant to Reduce Rent for Repairs:

The Tenant bears the burden of proof for this application and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

1. Proof that the damage, loss or event exists or existed
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or tenancy agreement

Based on the above I find that the Tenant has not met the requirements of proof for his request for an Order to have the Landlord make repairs to the unit, to allow the Tenant a reduced rent for repairs, services or facilities agreed upon but not provided, or for the other issue which was related to harassment allegedly suffered by the Tenant and I hereby dismiss the Tenant's requests, without leave to reapply.

As the Tenant has not been primarily successful in his application, I hereby dismiss his request to recover the cost of the filing fee from the Landlord, without leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **July 31, 2009 at 1:00 p.m.** This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: July 03, 2009.

Dispute Resolution Officer