



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MNR, OPR, CNR, MNDC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent and utilities, and a request for a monetary order for \$2951.12 in outstanding rent and utilities. The landlord is also requesting that the respondent bear the \$50.00 filing fee paid for their dispute resolution application.

The tenant's application is a request for an order setting aside the Notice to End Tenancy for non-payment of rent and utilities, and a request for a monetary order for \$4900.00 for compensation for damages or loss under the residential tenancy act.

First of all it is my decision that I will not deal with all the issues that the tenant has put on his application. For claims to be combined on an application they must related.

Not all the claims on the tenant's application are sufficiently related to the main issue, to be dealt with together.

I therefore will deal with the request to have a Notice to End Tenancy cancelled and I dismiss the remaining monetary claim with liberty to re-apply.

Background and Evidence

On August 6, 2009 the landlord served the tenant with a 10 day Notice to End Tenancy for non-payment of rent for the month of August 2009 in the amount of \$1550.00 and for outstanding utilities totalling \$1401.12

The landlord has testified that:

- The full August 2009 rent is still outstanding, and now for the full September rent is also outstanding for a total of \$3100.00.
- The tenant also has not paid his portion of the utilities and at this time there is even more outstanding than the \$1401.12 that was on the Notice to End Tenancy.
- The tenant has told them he will pay the rent but then fails to do so.
- They are willing to let the tenant stay to the end of October 2009 if he pays the full outstanding rent right away and pays the October rent when it's due on October 1 2009.
- They do not trust the tenant to pay the rent however and therefore they want an Order of Possession and an order for the outstanding rent and utilities.
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The tenant testified that:

- He has not paid August 2009 or September 2009 rent, however he has the full amount and is able to pay it.
- He withheld the rent because of problems at the rental unit that the landlord has failed to deal with.

- He also does not believe he owes the full amount of utilities claimed by the landlords.
- He believes the Notice to End Tenancy should be cancelled due to the problems at the rental unit and the discrepancy in the amount of utilities owed.

Analysis

It is my decision that the landlord does have a right to an Order of Possession and an order for the outstanding rent for the month of August 2009.

The tenant did not have the right to unilaterally withhold the rent without first getting an order from a Dispute Resolution Officer allowing him to do so, and therefore this full rent is outstanding and I will issue an order for the full August 2009 rent.

I will also issue an Order of Possession to the landlord that is enforceable 72 hours after service on the respondent; however the landlords agreed during the hearing that they will not enforce the order if the tenant pays the full outstanding August 2009 rent, and the September 2009 rent, right away, and pays the full October 2009 rent when it is due on October 1, 2009.

The landlord and the tenant are both claiming different amounts of utilities are owed, however neither of them has supplied sufficient evidence to support their claims. I therefore dismiss the claims for utilities with leave to reapply.



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Conclusion

Tenants application

The tenants request to have a Notice to End Tenancy cancelled is dismissed without leave to reapply.

The tenants request for an order for the landlord to pay the filing fee that he paid for his dispute resolution application is dismissed without leave to reapply

The tenants request for a monetary order for \$4900.00 is dismissed with leave to reapply

Landlords application

I have issued an Order of Possession to the landlords, enforceable 72 hours after service on the respondent.

I have issued an order for the tenant to pay the August rent of \$1550.00, plus the filing fee of \$50.00 for a total of \$1600.00, to the landlords.

The landlords claim for outstanding utilities totalling \$1401.12 is dismissed with 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: September 29, 2009.

Dispute Resolution Officer