



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, CNR, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 day Notice to End Tenancy for Unpaid Rent and to cancel a Notice to End Tenancy for Cause, for an Order for the landlords to make repairs to the unit, site or property and a Monetary Order to recover the filing fee.

The tenant served the landlords in person on October 29, 2009 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Should the notice for unpaid rent be cancelled?
- Should the notice to end tenancy for cause be cancelled?
- Is the tenant entitled to an order for the Landlord to repair the rental unit?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?



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Background and Evidence

This month to month tenancy started on July 01, 2008. The tenant pays rent of \$1,250.00 which is due on the first of each month. The tenant paid a security deposit to the previous landlord of which the present landlords have no knowledge.

The landlords served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on October 28, 2009. On the same day and at the same time the landlords also served the tenant with a One Month Notice to End Tenancy for cause. The 10 Day Notice stated that the tenant had five days to pay the rent or apply for Dispute Resolution. The One Month Notice stated that the tenant had 10 days to dispute this Notice. The tenant filed his application to dispute both Notices on October 29, 2009 within the time allowed for both Notices.

The landlords testify that their property is being foreclosed on and as such they have been given an extension until February 17, 2010 to prepare and sell the property to prevent the bank foreclosing on the mortgage. Until that time the landlords remain the owners and landlords of the property. They testify that the tenant did not pay rent to them when it was due on October 01, 2009 and they issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent. The tenant did not pay his November rent to the landlords but instead sent his November rent less the amount of \$540.00 he deducted for some repairs, without the landlords permission, to the lawyer acting for the bank. The landlords have provided in evidence a letter from the lawyer stating that this money was used against their outstanding mortgage payments. This letter also states that the lawyer did not request the tenant to send him his rent payments. This letter was also sent to the tenant to notify him that the bank does not assume any landlords rights or duties. The landlords testify that they expressly asked the tenant to continue paying his rent payments to them and not to the lawyers' office.

The landlords testify that the tenant did not pay rent to them for December, 2009 when it was due and they request an Order of Possession due to unpaid rent.

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The tenant claims he sent a cheque to one of the landlords for his October rent and this was mailed on September 30, 2009. He also claims he was told by someone in the lawyers' office to send his rent payments to the lawyer as the property was being foreclosed on. The tenant claims he had the landlords permission to deduct \$330.00 from the rent payment for three loads of water as the well had run dry and for the cost of purchasing kitchen taps and having these fitted at a cost of \$210.00. The tenant has not submitted any receipts for these items in evidence and the landlord's dispute that they gave the tenant permission to make any deductions from his rent. The tenant also claims that he has sent the lawyer cheques totalling \$1,950.00 for his December and January rent payments.

I allowed the tenant and landlord time at the end of the hearing to send in any additional information from the Lawyer acting for the bank and any relevant bank statements showing any rent payments made or received, The landlords have provided a letter from the lawyer which states that he did not instruct the tenant to send any payments to his office. The landlords have provided in their additional evidence from the lawyer the envelope the tenant posted two cheques to him. This was dated December 11, 2009 the day after the hearing was held. In this envelope the tenant sent two cheques of \$1,250.00 each to the lawyer. The landlords have also provided bank statements for October, November and December which show that no rent payments have been cashed by them.

The landlords gave the following reasons on the Notice to End Tenancy for Cause:

- tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- tenant has assigned or sublet the rental unit/site without landlord's written consent

- tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

The landlords claim the tenant has allowed other occupants to live in campers on the property and they have received complaints from their neighbours about a large amount of people living on the property, a marijuana plant in evidence outside one of the campers, the noise being made by these additional people and the unsightly campers parked on the property. The landlords also raised concerns about the hygiene facilities with all the additional people camping on the property.

The tenant disputes the reasons given on the One Month Notice. He states that the campers on the property were his children and their friends who were visiting from Ontario and stayed for 10 days. The tenant also claims these visitors used the bathroom facilities in his rental unit. The tenant confirms that one of his children or their friends did have a marijuana plant which the tenant removed.

The landlords claim the tenant has been operating a business on the property. This business is connected to cutting wood and as such the tenant has been doing business from the property instead of in the woods. He has been using a chainsaw to cut logs from the early morning and has disturbed another occupant living on the property and the surrounding neighbours. The landlords state that they are not insured for business use of the property and would be liable if the tenant caused an accident while carrying out his business. The landlords also claim they have received noise complaints about the people living in the campers on the property. The tenant disputes this and states that he had some fire wood delivered and was using the chainsaw to cut his fire wood. He claims he is not operating a business on the property.

The landlords claim that the tenant allowed another person to reside at the rental unit without their permission. When they found out that this person had disabilities they agreed that he could remain as a tenant. While the property was being shown to prospective purchasers there was an incident where this tenant told the prospective purchaser that the property was going into foreclosure and they could buy it cheaper from the bank.

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The tenant disputes the landlord's testimony. He states that he carries a \$3,000,000 insurance policy for his business and only his workers are allowed to handle the chainsaws. He also claims that he was the other tenants' landlord as he sublet to him and therefore he cannot be held responsible for what is said to any prospective purchasers.

The tenant also claims that the landlords have not repaired the furnace or the glass in the living room window. The landlords claim the furnace was repaired on January, 29, 2009 and they have not been notified by the tenant that it is not working since then.

Analysis

The tenant has applied to cancel the Notice to End Tenancy for unpaid rent. I have carefully considered all the evidence before me, including the affirmed evidence of both parties and I find that there is no evidence that the tenant paid his rent for October to the landlords as he claims. He has not provided any bank statements showing that this payment was made and the landlord's bank statements show that they have not paid in any cheques to the amount claimed to have been paid by the tenant. I also find that as the landlords remain as the owners of the property they are still entitled to receive rent from the tenant. The tenant paid his rent to the lawyer for the bank for November and December, 2009 despite having been told to send this to the landlords. The cheque for Decembers rent was posted on December 11, 2009 and received by the lawyer on December 14, 2009. During the hearing the tenant testified that he had already sent his rent payment to the lawyers' office for December and January's rent when in fact the documentation provided by the lawyer clearly shows that these rent payments were not posted until one day after the hearing was held.

Therefore, I find the tenant did not pay his rent when it was due and as such the 10 Day Notice issued on October 28, 2009 remains in force and effect. As the landlords have requested an Order of Possession this will be granted and the tenant must vacate the rental property two days after service of the Order of Possession.

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I also find the landlord's evidence concerning the One month Notice to End Tenancy for Cause has some merit. However, as an Order of Possession has been issued for unpaid rent no further orders will be issued concerning this Notice.

As the landlords have been issued with an Order of Possession and the tenant will be vacating the rental unit no further orders will be issued to the tenant for repairs to the rental unit.

As the tenant has not been successful with his claim he must bear the cost of filing his application.

Conclusion

The Tenant's application is dismissed without leave to reapply. The 10 Day Notice to End Tenancy for unpaid rent issued on October 28, 2009 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: December 18, 2009.

Dispute Resolution Officer