



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes O, ERP, LRE, PSF, RP, RR, CNR, MNR, OPR & FF

Introduction

Some documentary evidence and written arguments have 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 three applications for dispute resolution, two brought by the tenant and one brought by the landlord. All files were heard together.

Tenant's application-1

This is a request that I make a finding on whether this rental falls under the Residential Tenancy Act.

Tenants application-2

This is a request to have a Notice to End Tenancy, that was given for nonpayment rent, cancelled.

Landlords application

This is a request for an Order of Possession based on a Notice to End Tenancy that was given for nonpayment of rent, and a request for an order for outstanding rent totaling \$2150.00.

Background and Evidence

Tenants application-1

The tenant testified that:

- He has been living in this rental unit for the past three years and until just recently has always paid on a monthly basis.
- This past summer the landlords started collecting rent a daily basis, claiming that rent was \$25.00 per day.
- The landlord seldom gives receipts and rent has always been paid in cash however the fact that the landlord accepted rent a monthly basis leads him to believe that this is a residential tenancy as defined by the Residential Tenancy Act.

The landlord testified that:

- This is a daily rental with rent set at \$25 per day.
- They did except lump sum payments of \$350.00 from this tenant for a four week period; however no security deposit has ever been collected and there is no tenancy agreement and therefore they consider this a daily rental hotel.

Analysis

It is my decision that the tenant has shown that this is a residential tenancy as defined by the Residential Tenancy Act. The landlord has issued receipts for a four-week period and it is my decision that this takes it out of the realm of a daily rental.

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I therefore accept jurisdiction over these three applications.

I further order for the landlord bear the \$50.00 cost of the filing fee that the tenant paid for his application to have jurisdiction established, because the landlord has been telling the tenant that the Residential Tenancy Act has no jurisdiction over this tenancy.

Tenants application-2 and Landlords application

The tenant(s) have failed to comply with a Notice to End Tenancy and the tenant has admitted that the full rent for November 2009 and December 2009, which would amount to \$1575.00, is still outstanding.

Therefore, pursuant to Section 55, I have issued an order of possession for two days after service on the respondent.

The landlord(s) is given a formal Order of Possession and the tenant(s) **must** be served with this Order as soon as possible.

I also Order pursuant to Section 67 that the respondent(s) pay to the applicant(s) the sum of:

| | |
|------------------|-----------|
| Outstanding rent | \$1575.00 |
| Total | \$1625.00 |

The landlord had applied for an order for \$2150.00 in outstanding rent however the landlord has not supplied any evidence in support of this claim, relying strictly on his own testimony. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met, and in this case the respondent denies owing any more than two months rent.



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Therefore it is my decision that the landlord has not met the burden of proving that the tenant owes \$2150.00. I have therefore only allowed the amount admitted to by the tenant in the remainder of the claim is dismissed.

Conclusion

Tenant's application -1

I found that the Residential Tenancy Act does have jurisdiction over this matter and ordered that the landlord bear the \$50.00 cost of the filing fee paid for this application.

Tenant's application-2

The tenant's application to have a Notice to End Tenancy set aside is dismissed without leave to reapply. I further order that the tenant bear the \$50.00 cost of the filing fee be paid for this application.

Landlord's application

I have issued an Order of Possession to the landlord for two days after service on the respondent. I also allowed \$1625.00 of the landlord's claim, from which I have set off the \$50.00 that I allowed in the tenant's claim, and I have issued an order for the tenant to pay \$1575.00 to the landlord.

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 17, 2009.

Dispute Resolution Officer