



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, CNC, O, MNR, MNSD, OPC, OPR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession and a monetary order for unpaid rent. The tenant has applied to cancel the notices to end the tenancy.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and for cause; to a monetary Order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Preliminary Issues

This hearing was originally scheduled for November 23, 2009, both parties attended, however there was a question of the service of evidentiary documents and the hearing was adjourned to today's date.

At the outset of today's hearing the landlord informed me that the tenant had been removed from the premises by the police and the landlord currently has possession of the rental unit and she has therefore amended her application as there is no need for an order of possession.

Background and Evidence

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 6, 2009 with an effective vacancy date of December 19, 2009 due to \$1182.00 in unpaid rent.

Documentary and testimonial evidence offered by the landlord indicates that the tenant had failed to pay the full rent owed for the months of December, 2009 and January 2010 and that the tenant were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by posting it on the tenant's door on December 6, 2009 at 12:00 noon.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary and testimonial evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on December 9, 2009, and the effective date of the notice is December 19, 2009. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As a result of the tenant's absence at this hearing, I dismiss his application in its entirety without leave to reapply.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,414.00** comprised of \$2,364.00 rent owed and the \$50.00 fee paid by the Landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposit and interest held in the amount of \$1,107.21 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,306.79**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: January 06, 2010.

Dispute Resolution Officer