



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, CNR, MNR, CNC, MNDC, FF

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation to replace furniture destroyed by bed bugs, reimbursement for bed bug treatment and for the filing fee.

Issues to be decided

Is the landlord entitled to an order of possession or should the notices to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to compensation and the filing fee?

Background and Evidence

The tenant was employed by the landlord as a resident manager/caretaker starting February 01, 2008. He was allowed to occupy the dispute rental unit, rent free, as part of the terms of his employment. Neither party filed a copy of the terms of the agreement regarding the portion of wages that was considered rent. The tenant did not pay a security deposit.

The employment was terminated on December 01, 2009 and the landlord also served the tenant with a one month notice to end the tenancy on the same date. The tenant informed me that he was wrongfully dismissed and had filed a claim with the Employment Standards Branch.

Since rent is payable on the first of the month, the effective date of the notice to end tenancy should have been January 31, 2010. The landlord recognized the error and accordingly on December 30, 2009, served the tenant with a second notice to end tenancy with an effective date of January 31, 2010.

The tenant was required to pay rent upon termination of employment. Since the tenant did not pay rent, on December 30, 2009, the landlord also served the tenant with a ten day notice to end tenancy.

The landlord has applied for an order of possession and a monetary order for rent for the months of December and January.

The tenant testified that sometime during the second week of October, 2009, the tenant noticed the presence of bed bugs in his suite and verbally notified the landlord of his intention to hire a pest control company to treat the bugs at the landlord's expense. The landlord did not dispute this and the tenant filed an invoice dated November 20, 2009, in the amount of \$309.05.

The tenant stated that he had to dispose of his furniture that was infested with bed bugs and has filed photographs of the furniture along with bites marks on the bodies of his two children. The tenant is claiming \$3000.95 to replace his furniture which he stated was over five years old. The tenant did not file any evidence to support his monetary claim of \$3000.95 other than photographs of bug infested furniture.

The tenant has applied to cancel the notice to end tenancy and for monetary compensation to replace his furniture and to be reimbursed for the bed bug treatment.

Analysis

The tenant's employment with the landlord ended and pursuant to section 48(2) of the *Residential Tenancy Act*, an employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of the employment, by giving notice to end the tenancy, if the employment is ended. The tenant continued to reside in the rental unit but failed to pay rent and the landlord served the tenant with a ten day notice to end tenancy for nonpayment of rent.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent. If the tenant does not pay rent, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

On December 30, 2009, the tenant received notices to end tenancy for end of employment and for non payment of rent. The tenant did not pay overdue rent within five days of receiving the notice. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective on January 31, 2010. This Order may be filed in the Supreme Court for enforcement.

Even though I find that the tenant owes rent for the period following the termination of his employment, the landlord has not filed any evidence to support his claim of the amount of the monthly rent. The tenancy agreement states that the amount of rent is zero. The terms of the employment contract may specify the amount of rent which is a benefit of employment, but since I do not have this information in front of me, I am unable to grant the landlord a monetary order for unpaid rent. Accordingly, the landlord's claim for rent is dismissed with leave to reapply.

During the hearing the tenant requested that his claim for compensation for the replacement of his furniture be withdrawn. Shortly after, he changed his mind and asked that his claim be considered in this decision.

The tenant did not provide any evidence to support the amount that he was asking for as compensation for his furniture which he stated was over five years old. In the absence of evidence to support his claim, the tenant's claim is dismissed.

I note that the tenant treated the rental unit for bed bugs on November 20, 2009 even though he noticed the problem mid October. The delay in treating the problem could have contributed towards the escalation of the infestation leading to his children being bitten and the mattress getting severely infested. However, since the landlord has agreed to reimburse the tenant the cost of the treatment, I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$309.05. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Both parties established a portion of their claim; therefore they must bear the cost of filing their own application.

Conclusion

I grant the landlord an order of possession effective on or before **1:00 p.m. on January 31, 2010**. I grant the tenant a monetary order in the amount of **\$309.05**.

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 18, 2010.

Dispute Resolution Officer