



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, MT, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied for more time to apply; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing I determined that the tenant had been served the Notice to End Tenancy on January 7, 2010. On January 11, 2010, the tenant applied to cancel the Notice. As the tenant applied to cancel the Notice within 5 days, he does not require more time.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on January 4, 2010, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on January 4, 2010, and posted to the tenant's door.

This tenancy commenced 7 or 8 months ago, rent is \$750.00 per month, due on the first day of the month. The tenant last paid rent in December 2009, and agrees that the landlord has not received rent for January and February 2010.

The tenant claimed to have attempted to pay rent owed on January 2, 2010 and that the landlord had refused to accept his cash. The tenant also attempted to pay rent directly to the landlord in February and submits that the landlord again refused to accept his cash rent payment.

Until December 2009, rent had been paid to the landlord's agent, who appeared at this hearing as the tenant's witness. Since November 2009, the rent could be paid by placing the payment through a mail slot in the door of the landlord's office. The landlord denied that she has refused rent payments.

The tenant's witness stated that in January she saw the tenant after he had attempted to make his cash rent payment and observed that afterward he still had the cash in his pocket.

The landlord finds the witness testimony lacking in credibility as the witness was recently fired by the landlord and is facing her own eviction by the landlord.

The tenant requested that his hot water and oven be repaired. The tenant stated he has made repeated requests to have his hot water repaired. The landlord submitted as evidence, signed notes from 6 other occupants of the building, all of whom confirm that they have hot water.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that 10 Day Notice to End Tenancy for Unpaid Rent is of full force and effect. I have rejected the tenant's testimony that he attempted to pay his rent and that payment was refused by the landlord.

I found the landlord's testimony more reliable and I base this upon her testimony that payments could be made via a mail slot in the doorway of the office. If the tenant did not wish to leave cash through the door mail slot the tenant was free to make a payment by cheque or money order. This payment could have been made at any time, through the mail slot.

I placed little weight on the tenant's witness testimony. This individual was recently fired by the landlord and is in conflict with the landlord over her tenancy, which leads me to accept the landlord's statement that the witness cannot be wholly objective in her testimony.

I find it is unlikely that the landlord would forfeit \$1,500.00 in rent payments. The landlord had accepted the December rent payment and had no reason to refuse a payment on January 2, 2010, only to issue a Notice to end tenancy 2 days later. I also find that the failure of the tenant to make rent payments for 2 months, lends more credibility to the landlord. The tenant had other methods of payment available to him yet did not offer any evidence of attempted payment by other means.

The landlord did not request an Order of possession.

If this tenancy does continue I find that the landlord must provide the tenant with Notice to enter as required by section 29 of the Act, in order to determine if the oven requires repair. If repairs are needed I find that the landlord must ensure that this repair is made within a reasonable period of time.

In relation to the hot water, I find the tenant has the burden of proving this loss and has failed to provide any evidence of problems with the hot water. Taking into account notes from 6 other occupants of the building who confirm that they have hot water, I find that this claim is dismissed.

Conclusion

As I have determined that the tenant has failed to pay rent for January and February 2010, I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on January 4, 2010, is of full force and effect.

The tenant's Application to cancel the Notice is dismissed without leave. The landlord did not request an Order of possession.

If the tenancy does continue the landlord is to investigate and make any repairs required to the oven.

The tenant's claim in relation to hot water repair is dismissed.

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: February 16, 2010.

Dispute Resolution Officer