



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant - CNR, MT

For the landlord - OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was set to deal with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were due to be heard together. The tenant seeks to cancel the Notice to End Tenancy for unpaid rent. The tenant also requested more time to file his application to cancel the Notice. However as the Notice was served on January 05, 2010 and the tenant filed his application on January 08, 2010 this section is not required. The landlord has requested an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, an order for the landlord to keep the security deposit and to recover the filing fee.

The tenant served the landlord on January 12, 2010 with a copy of the application and a Notice of the Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The hearing went ahead as scheduled the tenant dialed into the conference call but after 10 minutes the landlord had not dialed into the call. Based on this I find that the landlord has failed to present the merits of his application and his application is dismissed with leave to reapply.

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?

Background and Evidence

The tenant testifies that this tenancy started on June 01, 2008, this was a month to month tenancy with a monthly rent of \$800.00. The tenant paid a security deposit of \$425.00 on May 16, 2008.

The tenant states that he received a 10 Day Notice to End Tenancy on January 05 or 06, 2010. He does not dispute the fact that he owes rent to the landlord but testifies that due to having had some surgery he reached an agreement with the landlord about the payment of the rent arrears. The tenant states that he does intend to move from the rental unit at the end of February, 2010.

The tenant states that due to the verbal agreement he had with the landlord concerning the payment of the rent arrears the 10 Day Notice to End Tenancy should be cancelled.

Analysis

The landlord has not attended this hearing to provide evidence to substantiate their claim or dispute the tenants claim that the 10 Day Notice should be cancelled. In this matter, the landlord would have the burden of proof and must show that grounds exist to



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

end the tenancy. The landlord must show that the landlord and tenant did not have a verbal agreement in place concerning the rent arrears and evidence of the rent arrears. This means that if the landlord does not provide evidence to support his notice in order to satisfy the burden of proof the Notice will be cancelled. In the absence of any corroborating evidence, I find that the landlord has not proven that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated January 05, 2010 is cancelled and the tenancy will continue.

The landlords' application is dismissed in its entirety with leave to reapply.

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 19, 2010.

Dispute Resolution Officer