

DECISION

Dispute Codes MT, CNR, OPR, OPC, OPB, MND, MNR, MNSD, MNDC, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession and a monetary order. The tenant has applied for more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; and for an order to make the landlord complete repairs.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing I questioned the landlord as to whether or not he had issued, in addition to a 10 Day Notice to End Tenancy for Unpaid Rent, any other notices to end the tenancy. As the landlord indicated that he had not I advised him we could not proceed with his requests for an order of possession based on cause (Section 47) or for breaching an agreement with landlord (Section 47). The landlord's application was amended.

Issues(s) to be Decided

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

As well, it must be decided whether the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 10 Day Notice to End a Tenancy for Unpaid Rent; for an order directing the landlord to complete repairs, pursuant to sections 32, 46, 66, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant testified that she acknowledged receipt of the 10 Day Notice to End Tenancy for Unpaid Rent on February 3, 2010 and that she applied for Dispute Resolution on February 10, 2010. She stated that she does not have a car and was unable to get to a Residential Tenancy Branch or Government Agent's office until that time.

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on November 28, 2009 for a month to month tenancy beginning on December 1, 2009 for the monthly rent

of \$1,495.00 due on the 1st of the month and a security deposit of \$750.00 was paid;

- A copy of a 10 Day Notice to End Tenancy dated February 3, 2010 with an effective vacancy date of February 13, 2010 for unpaid rent in the amount of \$1,431.00 and utilities in the amount of \$312.00;
- Notes and a copy of a Condition Inspection Report completed by the landlord on February 24, 2010;
- A summary of the details of the landlord's monetary claim;
- A copy of a cheque from the tenant to the landlord dated November 24, 2009 indicating funds were frozen in the tenant's account;
- A copy of a hydro bill for the billing period October 31, 2009 to January 4, 2010 and handwritten calculations for the tenants portion; and
- A copy of three cheques to the landlord from BC Employment and Income Assistance
 - \$585.00 dated December 11, 2009;
 - \$1,312.08 dated December 16, 2009 noted for January 2010 rent; and
 - \$1,312.08 dated January 20, 2010 noted for February 2010 rent.

The tenant confirmed that that her entire monthly income had been paid directly to the landlord for rent, however this amount was less than the rental amount and she was unable to pay the balance owing to the landlord.

The landlord testified that he had completed an inspection of the rental unit on February 24, 2010 and there appears to be substantial damage and general uncleanliness in the rental unit. The tenant testified that she has started cleaning up, including shampooing the carpets.

The landlord testified that he had just completed the inspection but had not directed the tenants to clean or repair anything at this time and that as the tenant still lives in the rental unit, the landlord noted he would not pursue compensation for damage to the unit at this time.

Analysis

Section 66 of the Act allows extending the time limit only in exceptional circumstances, such as hospitalization, as per the tenant's testimony exceptional circumstances did not exist that prevented her from filing her application within 5 days of receipt of the notice.

As such, I dismiss the tenant's application for more time to apply to cancel the notice to end tenancy. As I have dismissed the tenant's application for more time, I must also dismiss her application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent.

Section 46 allows a landlord to end a tenancy for unpaid rent or utilities by giving a valid notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As the tenant failed to pay the rent or file an Application for Dispute Resolution within 5 days for receiving the notice the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. While I acknowledge the tenant did file an Application, as noted above it was not within the 5 days required by the *Act*.

The landlord's evidence shows the landlord has received from the tenant \$3,209 from the tenant since the start of the tenancy for rent and nothing for utilities. The rent for the four months of the tenancy totals \$5,980.00 plus \$447.00 in utilities. The balance owing the landlord is \$3,218.00.

As the landlord is not pursuing any damages to the rental unit at this time, I advise the tenant to ensure the condition of the rental unit must be, according to Section 37 of the *Act*, reasonably clean, and undamaged except for reasonable wear and tear. I remind landlord of his obligation to provide the tenant with two opportunities to complete a move out inspection of the rental unit at the end of the tenancy.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,268.00** comprised of \$3,218.00 rent and utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,518.00**. 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: March 25, 2010.

Dispute Resolution Officer