

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and to recover the filing fee for the Application.

The Landlord had initially applied for this relief via the Direct Request process. However, the Tenant applied for a Review of that Decision and was granted this new hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Agents for the Landlord, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on December 24, 2009, by serving an adult who resides with the Tenant. The adult served was the spouse of the Tenant. I find the Tenant has been served in accordance with the Act.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Agent for the Landlord testified that the Tenant had moved into the rental unit and the tenancy started on November 1, 2009. The Tenant had provided the Landlord with a cheque in the amount of \$800.00 for a security deposit, and a cheque for \$1,600.00 for the first month of rent. Both cheques were returned by the financial institution due to insufficient funds in the Tenant's accounts.

The Agent for the Landlord explained the Tenant has not paid rent for five months, from November 2009 to March of 2010, at \$1,600.00 per month.

The Tenant testified he had not paid the rent for the rental unit because it required a lot of cleaning up when he moved in. The Tenant had filed photographs and other evidence in the Landlord's Application and was attempting to claim for a monetary offset of the rent against his alleged losses in the Landlord's Application.

The Tenant claimed he had vacated the rental unit, however, the Tenant was still attending the rental unit to pick up his mail. The Agents for the Landlord explained they had not received Notice from the Tenant that he was vacating the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or January 3, 2010.

The Tenant should have filed his own claim if he thought the rental unit was not as was promised in the tenancy agreement. Under the Act, the Tenant is prohibited from withholding rent unless he has an order allowing him to do so. He has no such order.

While the Tenant claims he has vacated the rental unit, I find that the Landlord is still entitled to an order of possession, since the Tenant continues to return there to pick up mail. The Tenant must not do this following the date on the order of possession. He must put in a change of address notice with the post office, in order to re-direct his mail.

Therefore, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. March 11, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant admitted he had not paid rent for five months, and therefore I find that the Landlord has established a total monetary claim of **\$8,050.00** comprised of \$8,000.00 in rent for November and December of 2009, and January, February and March of 2010 and the \$50.00 fee paid by the Landlord for this application.

I grant the Landlord an order under section 67 for the balance due of **\$8,050.00**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and a monetary order for the rent due.

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 09, 2010.

Dispute Resolution Officer