

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord applied for an order of possession for unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Tenant filed an Application for Dispute Resolution requesting an order to cancel the Notice to End Tenancy for unpaid rent and an order for the Landlord to make repairs to the rental unit, provide required services or facilities, and to authorize the Tenant to change the locks in the rental unit.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note this matter was originally scheduled for hearing on January 25, 2010, however, the Tenant appeared and explained she had an urgent family matter to attend to. The Tenant requested an adjournment and explained she had the rent money for the Landlord in her purse. I granted the adjournment, however, I also ordered the Tenant to pay her rent to the Landlord on January 25, 2010.

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?

Has the Landlord breached the Act or tenancy agreement, entitling the Tenant to the relief sought?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on December 10, 2009. 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.

As described above, the Tenant filed an Application for Dispute Resolution. At the initial hearing on both Applications, the Tenant testified she had the rent money for the Landlord in her purse, and though the Tenant was allowed an adjournment, she was also ordered to pay the rent due to the Landlord. The Tenant testified today she has not paid rent as ordered, nor did she pay rent for December of 2009, and January, February and March of 2010.

The Tenant claims she withheld rent because the Landlord entered her rental unit without permission in November of 2009. The Tenant testified the Landlord entered to flip on a breaker which had tripped due to heaters being used in another portion of the rental unit. The Tenant testified that initially the furnace in the rental unit did not work, but then had been fixed by the Landlord.

Analysis

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

The Tenant has not paid rent as required by the Act and tenancy agreement, and therefore, I find the Landlord is entitled to an order of possession and a monetary order.

The Tenant is not allowed to withhold rent even if the Landlord is in breach of the Act or tenancy agreement. However, I also find the Tenant had insufficient evidence to prove the Landlord has breached the Act or tenancy agreement, and therefore, I dismiss her Application without leave to reapply.

Therefore, pursuant to section 55 of the Act, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. March 12, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I further find that the Landlord has established a total monetary claim of **\$4,050.00** comprised of \$4,000.00 in unpaid rents and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$500.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,550.00**. This order 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 10, 2010.

Dispute Resolution Officer