



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, CNR, FF

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution for an order of possession of the rental unit, a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim.

The Tenant filed an Application for Dispute Resolution seeking more time to cancel a Notice to End Tenancy, and for an order to cancel the Notice.

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?

Is the Tenant entitled to more time to file her Application?

Should the Notice to End Tenancy be cancelled?

Background and Evidence

Based on the affirmed testimony of the Landlord and her Agent, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on January 10, 2010 by posting on the door for the rental unit. The Landlord testified she posted the Notice to End Tenancy herself on January 10, 2010. Under the Act the Tenant is deemed served with the Notice three days after posting on the door. The effective date of the Notice was indicated as January 20, 2010. Under the Act the effective date of the Notice was corrected to January 23, 2010, due to the method of service.

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 Tenant filed her Application on February 12, 2010. The Tenant provided no evidence or explanation as to why her Application was filed beyond the effective date of the Notice to End Tenancy.

The Tenant testified she had not paid rent for January of 2010, as well as for February and March of 2010. The Tenant alleges she tried to pay the Landlord for January rent in partial payments, but the Landlord refused to accept any rent money. The Tenant also alleges she did not receive the Notice to End Tenancy in January of 2010.

The Tenant also testified that she had not paid rent in February because her purse was stolen from the rental unit. She was upset the Landlord would not call the police for her stolen rent money. The Tenant further testified the reason she did not pay all the rent for December of 2009, and for the months up to March 2010, because she has no hot water in the rental unit.

Prior to the conclusion of the hearing, the Tenant had a male witness come on to the phone. The male witness refused to identify himself. His speech was slurred and he sounded intoxicated. The male witness was belligerent and aggressive, and began swearing at this Dispute Resolution Officer. The Tenant, or her unidentified witness, then disconnected their phone from the conference call prior to its conclusion.

Analysis

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

Due to the inconsistencies of her testimony, I find the Tenant's evidence lacked credibility. I accept the testimony and evidence of the Landlord in regard to service of the Notice to End Tenancy and to the claims being made against the Tenant.

I find that the Tenant filed her Application beyond the effective date of the Notice to End Tenancy. Under section 66(3) of the Act I am unable to extend the time for the Tenant to have filed her Application, and therefore, **I dismiss the Application for Dispute Resolution of the Tenant.**

I find the Notice to End Tenancy is valid and should not be cancelled.

I find the Tenant has not paid rent owed to the Landlord, and therefore, **I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant.** 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 **\$2,450.00** comprised of \$150.00 in rent due for December of 2009, \$2,250.00 in rent due for January, February and March of 2010, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$375.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,075.00.**

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 24, 2010.

Dispute Resolution Officer