



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

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

The Tenant requested additional time to dispute a 10 day Notice to End Tenancy, to cancel a 10 day Notice to End Tenancy, to cancel a notice for the Landlords' use of the rental unit, for orders for the Landlord to make repairs to the unit, and to reduce the rent for 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 note the Tenant has applied on time to dispute the 10 day Notice to End Tenancy and therefore, that portion of his Application does not need to be dealt with. Furthermore, there is no evidence the Landlords had served the Tenant with a Notice to End Tenancy for the Landlords' use of the property, and that portion of the Tenant's Application is therefore dismissed.

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 the relief sought?

Background and Evidence

This tenancy began on October 1, 2009. The rent the Tenant was to pay was \$1,500.00 per month, and the Landlords received a security deposit of \$750.00 on October 1, 2009.

Based on the testimony of both parties, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on February 10, 2010, by personal 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 disputed the Notice within five days of service.

The Landlords claim the Tenant failed to pay \$400.00 in rent for January of 2010, \$500.00 for February of 2010, and \$1,500.00 for March of 2010.

The Tenant claims he did work on the rental unit and wanted the Landlords to pay him for his work. He testified that there were many repairs required at the rental unit. He explained he had given the Landlords a bill for his labour at the unit in partial payment of rent. The Tenant also testified that the Landlords have been doing renovations to the rental unit and he has lost use of about 30% of the rental unit and therefore, he should be entitled to a rent reduction. He also testified he has had trouble finding work. For the above reasons the Tenant has not paid all of the rent due.

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 due to the Landlords. Under section 26 of the Act, the Tenant may not withhold rent unless there is an order under the Act to do so. The Tenant should have paid his rent and then applied for compensation under the Act or tenancy agreement. He failed to do so and withheld rent that was due, in breach of the Act. Therefore, I allow the Landlords' Application.

I find the Tenant's Application should be dismissed, as he had insufficient evidence to prove his claims. For example, he had no agreement, invoices or receipts to prove he did work for the Landlords in exchange for rent, and insufficient evidence to show he had lost use of any portion of the rental unit.

Therefore, I find that the Landlords are 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 Landlords have established a total monetary claim of **\$2,450.00** comprised of \$400.00 in rent for January, \$500.00 for February, and \$1,500.00 for March of 2010 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlords retain the deposit of **\$750.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,700.00**. 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 30, 2010.

Dispute Resolution Officer