

DECISION

Dispute Codes CNR, MNDC, ERP, RP, RR, MT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a Notice to End Tenancy for unpaid rent, for orders for the Landlord to make repairs or emergency repairs to the rental unit, to allow the Tenant to reduce rent, and for more time to file an Application to dispute the Notice to End Tenancy.

Both parties appeared at the hearing 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.

Issues(s) to be Decided

Is the Tenant entitled to the relief sought?

Background and Evidence

The Landlord testified that the Tenant has been issued two 10 day Notices to End Tenancy for unpaid rent. The Landlord explained he served the first Notice on April 3, 2010, to the Tenant.

In her Application the Tenant requested more time to dispute the first Notice to End Tenancy, however, she does not recall when she was served with the Notice. The Tenant filed her Application on April 9, 2010, and did not provide any evidence as to why she filed late. I find the Tenant was late making her Application.

The Tenant did not supply in evidence a copy of the disputed Notice. She claimed the Notice was not valid, however, she did not provide copies in evidence.

The Tenant admits she has withheld the rent payments. She claims her property has been damaged by the Landlord and so she has not paid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant's Application for Dispute Resolution must be dismissed.

The Tenant filed her Application to cancel a Notice to End Tenancy late.

The Tenant had not submitted in evidence a copy of the Notice she wanted cancelled. The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenant.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Tenant's claim, in particular when she is asking to have this document cancelled.

The responsibility of proving a claim is on the person making the claim. As the Tenant failed to provide a copy of the Notice, or any other documentary evidence, I find the Tenant has provided insufficient evidence to prove her claim.

Moreover, by her own admission the Tenant has failed to pay rent, as she is withholding it from the Landlord. The Tenant provided insufficient evidence regarding the alleged damages to her property or her claims against the Landlord.

More importantly, under section 26 of the Act, the Tenant is prohibited from withholding rent whether or not the Landlord is complying with the Act or tenancy agreement, unless the Tenant has an order from a Dispute Resolution Officer allowing her to deduct or withhold rent. The Tenant first withheld her rent and later applied to get an order allowing her to do this. I find the Tenant has breached the Act by withholding rent without an order or other authority to do so under the Act.

Based on the above reasons the Tenant's Application is dismissed.

Following my dismissal of the Application, the Landlord requested an order of possession. Section 55(1) of the Act requires that I must grant that request.

I find that the Landlord is entitled to an order of possession effective two days following service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Lastly I note the Tenant had several witnesses in the room during the course of the hearing, despite being told at the outset of the hearing that her witnesses must not hear evidence prior to giving their testimony. Following my dismissal of her Application, the

Tenant put two of these witnesses on the phone and both became argumentative and confrontational. The Tenant then disconnected from the hearing prior to its conclusion.

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: May 27, 2010.

Dispute Resolution Officer