

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

The tenant's application is a request to have a 10 day Notice to End Tenancy for nonpayment of rent canceled and a request that the landlord bear the \$50.00 cost of the filing fee the tenant paid for the application for dispute resolution.

The landlord's application is a request for an Order of Possession based on the 10 day Notice to End Tenancy, and a request for a monetary order for \$1150.00. The landlord is also requesting that the tenant bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

Background and Evidence

The tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on May 12, 2010.

The tenant testified that:

- He paid his May 2010 rent in cash by putting it in the visor of the landlord's truck.
- He has a witness who saw him put the rent money in the visor of the landlords truck.

The tenant is therefore requesting that the Notice to End Tenancy be cancelled and that the landlord bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

The landlord testified that:

- He never found the May 2010 rent in the visor of his truck and that is why the Notice to End Tenancy was served.
- He had also applied for June 2010 and July 2010 rent on his application for dispute resolution however the tenant has paid the rent for both June 2010 and July 2010 and therefore that money is not outstanding.
- He had also requested \$400.00 because he thought he may have expenses to remove junk after the tenant vacated however at this point he is not incurred any expenses.

The landlord is therefore requesting an order possession based on the Notice to End Tenancy for unpaid rent for the month of May 2010, a request for that outstanding rent of \$250.00, and a request that the tenants bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

Analysis

It is my finding that the tenant has not met the burden of proving that he paid the May 2010 rent. The tenant and the witness claim of that the rent was put in the landlord's

visor however it is my decision that since the landlord testified that he never found the rent in his visor, this rent is still outstanding.

It is the tenant's responsibility to ensure that the rent is received by the landlord, however in this case the tenant left the rent in a place where it could easily have been removed by anyone and since the landlord testified that he did not find any rent in the visor is truck it would appear that, someone other than the landlord, has removed the money.

Therefore since the tenant has not been able to show that the rent was in fact received by the landlord, the tenant is still liable for the full May 2010 rent of \$250.00.

However since the landlord has collected rent for the months of June 2010 and July 2010, the landlord has re-establish the tenancy and I will not issue an Order of Possession based on the original Notice to End Tenancy for non-payment of May 2010 rent.

I make no further monetary orders in favour of the landlord; because the June 2010 and July 2010 rent have been paid in full and, to date, the landlord has incurred no costs for junk removal.

I will allow the landlords claim for the filing fee however, as I have allowed a portion of the landlords claim.

Conclusion

Tenants application

The tenant's application is dismissed in full without leave to reapply.

Landlords application

The request for an Order of Possession based on the May 12, 2010 Notice to End Tenancy is denied and I have issued an order for the tenant to pay \$300.00 to the landlord.

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: July 02, 2010.

Dispute Resolution Officer