

DECISION

Dispute Codes MT CNR RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to request more time to make an application to cancel a notice to end tenancy, to obtain an order to cancel a notice to end tenancy for unpaid rent, for reduced rent for services agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing package.

The Landlord and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant filed an amended application July 8, 2010 and admitted that he did not serve a copy of the amended application to the Landlord. Therefore today's hearing will proceed based on the items applied for in the original application filed May 27, 2010.

Issues(s) to be Decided

Is the Tenant entitled to orders under sections 66, 46, 65, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that his month to month tenancy began on October 1, 2009. He confirmed receipt of the 10 Day Notice for unpaid rent and unpaid utilities, in person

from the Landlord, on May 20, 2010. He confirmed that he did not file for dispute resolution until May 27, 2010, and argued that he assumed he would be granted extra time to file his application because May 24, 2010 was a statutory holiday.

The Tenant confirmed that he did not pay the May 2010 outstanding rent or the outstanding utilities listed on the 10 Day Notice until in full until sometime time around May 30th or into June, 2010.

The Tenant is seeking reduced rent for two reasons. First he was prevented from using the wood stove since January, 2010 when it was provided at the onset of the tenancy. The second reason relates to a water leak that happened during the beginning of his tenancy in the second week of October 2009 when a water leak began in the ceiling. He argued the Landlord repaired the water leak but did not finish the ceiling repair so he was left to look at an unfinished ceiling repair.

The Landlord testified and confirmed service of the May 20, 2010, 10 Day Notice to End Tenancy and the July 6, 2010, 10 Day Notice to End Tenancy. The Landlord argued that while the May rent and utilities were finally paid in full back in June 2010; she had never received payment for June 2010 rent. She argued that the Tenant's rent had been reduced after having to seal off the wood stove and that his rent was initially \$895.00 per month which was reduced to \$825.00 per month. As for the ceiling repair, the Landlord stated that the water leak was repaired and the Tenant's concerns are related to only cosmetic appearances of the ceiling. The Landlord requested an Order of Possession effective July 31, 2010.

In closing the Tenant argued that he did pay his June 2010 rent and that this payment was given to the Landlord's business partner. The Tenant referred to a written receipt provided in his documentary evidence as support of his testimony that payment for June 2010 was made.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 66(1) of the Act provides that the Director may extend a time limit established by this Act only in exceptional circumstances. Exceptional circumstances are such that the applicant would be prevented from making an application on time for reasons that were beyond their control, such as being hospitalized. Making an assumption that more time would be granted based on a holiday and without checking to protect one's rights does not constitute exceptional circumstances. Therefore I dismiss the Tenant's request for more time to make his application.

I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy. The notice was received by the Tenant on May 20, 2010, and the effective date of the notice is May 30, 2010, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant failed to pay the rent and utilities owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Also, having found that the Tenant did not make application to dispute the notice in the required time frame, I hereby dismiss his application.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession effective July 31, 2010.

The Tenant is seeking reduced rent for loss of services agreed upon but not provided. In the presence of the Landlord's opposing testimony that the Tenant's rent was reduced by \$70.00 per month to accommodate for the loss, I find the Tenant has failed

to provide sufficient evidence to support his claim. Therefore I dismiss the Tenant's claim for reduced rent.

The Tenant has not been successful with his application therefore I decline to award recovery of the filing fee.

Conclusion

A copy of the Landlord's decision will be accompanied by an Order of Possession effective July 31, 2010 at 1:00 p.m. This Order must be served on the Tenant and may be filed with the Supreme Court 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: July 15, 2010.

Dispute Resolution Officer