



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, OLC, RP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy; for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for an order to have the landlord make repairs; and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the tenant advised that he had not served the landlord with his amended application that included the monetary order, as such his application was amended to exclude that matter.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice for Unpaid Rent; to an order to have the landlord comply with the Act, regulation or tenancy agreement; to an order to have the landlord make repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32, 46, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on January 1, 2008 as a month to month tenancy with a current monthly rent of \$741.00 due on the 1st of the month. The tenant contends that he paid a \$200.00 security deposit to the previous landlord but the new landlord has no documented records of a security deposit from the previous landlord.

The landlord had issued and served, via registered mail, a 10 Day Notice to End Tenancy for Unpaid Rent on June 3, 2010 for unpaid rent in the amount of \$1,430.00. The tenant confirmed in his testimony that he received the notice on June 4, 2010. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The tenant had filed an Application for Dispute Resolution on June 11, 2010 to have the landlord comply with the Act, regulation or tenancy agreement and to have the landlord

ordered to make repairs. The tenant then filed an amendment to the application on June 15, 2010 to include an application to cancel the 10 Day Notice. The tenant testified that he was not able to make it to the office sooner than this to submit his application.

The parties confirmed that some rent payments were made but that the current outstanding rent amount includes unpaid rent for July and August, 2010 and as such there are total arrears of \$1,937.00.

The tenant requests that the landlord replace the carpet for health reasons for himself and his two children, as per the doctor's note submitted. The doctor states that all three are suffering from respiratory illness related to old mildewed carpet in his home.

Analysis

I have reviewed all evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice was received by the tenant on June 4, 2010 and the effective date of the notice is June 14, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

I accept that the tenant failed to submit an Application for Dispute Resolution within 5 days of receipt of the notice. In addition the tenant filed an application on June 11, 2010 to have the landlord comply with the *Act*, regulation or tenancy agreement but did not apply at that time to cancel the Notice to End Tenancy until he amended his application on June 15, 2010.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Because the tenant accepted the end of the tenancy by failing to pay the rent or submitting his Application for Dispute Resolution within 5 days of receipt of the Notice, I find the matters relating to repairs to the rental unit as no longer relevant to this tenant and dismiss this portion of the tenant's application.

Conclusion

As a result of the above findings, I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 3, 2010 and the effective end date of the tenancy was June 14, 2010.

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: August 03, 2010.

Dispute Resolution Officer