



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes CNC, CNR, OPR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant applied for an Order to cancel a 10 day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause.

The Landlord applied for an order of possession due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee for the Application.

The Tenant filed his Application, according to the file, on September 23, 2010. There was no evidence or testimony to support service of the Application for Dispute Resolution and Notice of Hearing on the Landlord.

The Landlord served his Application for Dispute Resolution and Notice of Hearing in person on October 5, 2010, and it is deemed served that day.

The parties appeared and were sworn into the hearing.

Preliminary Issue:

At the outset of the hearing, the Tenant became rude, antagonistic, verbally abusive, threatening, profane and disruptive, and, despite repeated warnings, continued with this behaviour until being muted in the conference call.

The Tenant thereafter was given several opportunities to cooperate so that I could hear his testimony, but the Tenant failed to respond to even one question before continuing with his rude behaviour.

Pursuant to Section 8.7 of the Rules of Procedure, the Tenant was excluded from the dispute resolution proceeding and the proceeding continued with the Tenant being muted.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the 10 day Notice to End Tenancy and One Month Notice to End Tenancy?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Landlord, I find that the Tenant was served with a Notice to End Tenancy (the "Notice") for non-payment of rent on September 16, 2010, in person. The Landlord provided a witness to the service of the Notice. 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, although the Application was dated seven days later.

The Landlord testified that the monthly rent is \$720.00, that the Tenant made a partial payment of \$360.00 in September and no payment in October. The Landlord testified that the current unpaid rent is \$1,020.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenant has not paid the outstanding rent owed to the Landlord and failed to apply to dispute the Notice within the five days, and therefore, is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, on September 26, 2010.

I therefore **dismiss** the Tenant's Application.

I find that the Landlord is entitled to an order of possession effective **October 27, 2010, at 5:00 p.m.** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$1,070.00** comprised of unpaid rent of \$1,020.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$350.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$720.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not apply to dispute the Notice to End Tenancy within five days. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and a monetary order for the balance due of **\$720.00**.

The Tenant's Application is dismissed.

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: October 27, 2010.

Dispute Resolution Officer