



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, 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.

The Landlord has applied for an order of possession based on the 10 day Notice to End Tenancy for unpaid rent, and monetary orders for unpaid rent and for alleged damage to the rental unit.

Both parties appeared, gave affirmed testimony 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.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy be cancelled?

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

Background and Evidence

The Landlord testified that on October 14, 2010, she personally served the Tenant with a 10 day Notice to End Tenancy for unpaid rent in the amount of \$600.00 (the "Notice").

The Tenant acknowledged service of the Notice but disputes the amount owed. The Tenant claims he paid the Landlord \$275.00 in cash on October 2, 2010. The Tenant has provided a statement from a third party who writes that they witnessed the Tenant paying the Landlord \$275.00 in cash on October 2, 2010. The Agent for the Landlord testified that she was at the rental unit with the Landlord on the recent visits made, and that the Tenant had not paid any rent money.

Nevertheless, it is agreed by both parties that all of the rent for October has not been paid and that no rent has been paid for November 2010.

The Tenant testified that he had a third party call the Landlord to offer the balance of the October rent and to begin paying the Landlord rent for November and onwards. The Tenant argued that the Landlord had refused the rent money from this third party.

The Landlord argued that the third party called to ensure that if the rent money was paid the Landlord would continue the tenancy with the Tenant. The Landlord testified that she told the third party that the Tenant had not paid any of the October rent and that she did not want the tenancy to continue.

In her Application, the Landlord also requested monetary compensation for damages to the rental unit.

Analysis

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

While there is insufficient evidence from either party to make a determination as to the amount of rent actually still owed for October, it is clear from the evidence of both parties that not all the rent has been paid for October of 2010, and therefore, I find that the Notice should not be cancelled. I further find the Tenant had insufficient evidence to prove the Landlord had refused to accept the full amount of rent due, during the five days following the service of the Notice.

Therefore, I dismiss the Application of the Tenant to cancel the Notice and I grant the Landlord an order of possession effective at **1:00 p.m. November 6, 2010**, which the Landlord consented to.

As to the Landlord's request for a monetary order for unpaid rent, I dismiss that claim with leave to reapply.

Likewise, the Landlord's claim for compensation for damage to the rental unit is dismissed with leave to reapply. The Landlord has requested monetary compensation prematurely, as the Tenant has a right under the Act to make repairs to the rental unit that he is responsible for, prior to vacating the rental unit.

I award the Landlord the return of her filing fee of \$50.00, and grant a monetary order in that amount. 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 all the rent due to the Landlord for October, within the five days allowed, following service of the Notice to End Tenancy. The Landlord is granted an Order of Possession and is granted a monetary order for the filing fee. The other monetary claims of the Landlord are dismissed with leave to reapply.

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: November 04, 2010.

Dispute Resolution Officer