



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RP, RR, OPR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant applied to cancel a Notice to End Tenancy for unpaid rent, for compensation under the Act or tenancy agreement, for an order for the Landlord to comply with the Act, for the Landlord to make emergency or other repairs to the rental unit, and to allow the Tenant to reduce rent.

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

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. The Tenant was represented by an Advocate at the hearing.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to a monetary order against the Landlord?

Is the Tenant entitled to the other orders sought?

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 testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on November 2, 2010 by personal delivery.

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.

The Tenant applied to dispute the Notice to End Tenancy, and sought various orders regarding repairs to be made to the rental unit. The Tenant was seeking \$3,500.00 in compensation.

The evidence of the Tenant was that she withheld the rent due to the alleged repairs required to the rental unit.

Analysis

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

I find that the Notice to End Tenancy is valid and should not be cancelled. I further find the Tenant had insufficient evidence to prove the rental unit required repairs, or what type of repairs were required, or that she had requested repairs to be made to the rental unit. Therefore, I find the Application of the Tenant should be dismissed without leave to reapply.

I find the Tenant breached the Act and tenancy agreement by failing to pay the rent when due. Under section 26 of the Act, the Tenant is prohibited from withholding rent, unless she has an order allowing her to do so, or other authority under the Act. Here I find the Tenant had no order or other authority to withhold the rent.

Having found the Notice to End Tenancy is valid, I find that the Landlord is entitled to an order of possession effective at **1:00 p.m. November 30, 2010**. 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 \$600.00 comprised of \$550.00 for one month of rent and the \$50.00 fee paid by the Landlord for this application.

Under section 72, I order that the Landlord may retain the deposit of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$225.00**.

This order may be filed in the Provincial Court (Small Claims) 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: November 29, 2010.

Dispute Resolution Officer