



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, FF, MNR, RR

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy; for a monetary order for the cost of emergency repairs; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing and gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by personally serving an employee for the landlord company on November 12, 2010, no one for the landlord attended the hearing.

During the course of the hearing, the tenant stated that he is withdrawing his claim for a monetary order for the cost of emergency repairs and the claim for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. Therefore, those portions of the tenant's application are hereby dismissed.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

This tenancy began on August 1, 2009 as a fixed term tenancy which expired on July 31, 2010 and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,011.00 per month is payable in advance on the 1st day of each month, and the tenant testified that there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$505.50.

The tenant testified that on November 3, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. The notice stated that the tenant failed to pay rent in the amount of \$2,672.00 that was due on November 1, 2010 and contained an expected date of vacancy of November 13, 2010. The tenant further testified that the landlord company has had several managers during the term of this tenancy, and the tenant has had to apply for dispute resolution for 4 previous notices to end tenancy and then prove that the rent had been paid. He quoted a file number for the previous application. The tenant also provided a receipt to prove that he is not in arrears of rent to the new property managers, and feels they are now satisfied that rent has been paid and have therefore not attended today's hearing.

He also testified that he asked the landlord's agents how they arrived at the figure of \$2,672.00 in unpaid rent, for which they had no explanation.

The tenant also testified that each time the landlord company employs new property managers, notices to end tenancy are served and then the tenant is required to pay a filing fee to dispute the notices. He also stated that he was not provided with an order to recover the filing fee in the previous hearing, an order was made in his favour, and he requests an order that he be permitted to deduct \$50.00 for this hearing and \$50.00 for the last hearing from a future rental payment.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due under the tenancy agreement, the landlord may serve the tenant with notice to end the tenancy. The tenant then has 5 days to pay the rent in full or apply for dispute resolution to dispute the notice. If the tenant pays the rent in full within 5 days, the notice has no effect.

I find that the landlord's failure to attend the hearing substantiates the tenant's claim that the tenant proved to the landlord's agents that the rent was paid. I also find that the landlord's failure to keep accurate records has inconvenienced the tenant, and the tenant is entitled to recovery of the filing fee for the application before me.

With respect to the tenant's application to recover the filing fee from the landlord for the cost of the previous application is not for me to decide. The tenant may apply to the Dispute Resolution Officer who heard that matter for an order to recover the filing fee by way of an application for correction.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling the notice to end tenancy is hereby allowed, and the notice to end tenancy is hereby cancelled. The tenant is also entitled to recovery of the \$50.00 filing fee, and I order that the tenant be permitted to deduct \$50.00 from a future rent payment to recover that amount.

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: December 02, 2010.

Dispute Resolution Officer