



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, LAT, LRE, MNDC, OLC, PSF, RP, RR, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

The claims on this application are not sufficiently related to the main issue to be dealt with together.

I therefore will deal with the main issue, which is the request to cancel a 10 day Notice to End Tenancy for non-payment of rent, and I dismiss the remaining claims, with liberty to re-apply.

Background and Evidence

On December 1, 2010 the landlord served the tenant with a 10 day Notice to End Tenancy for non-payment of rent which stated that \$9,000.00 in rent was outstanding.

The landlord testified that:

Residential Tenancy Branch
Ministry of Housing and Social Development

- The tenants agreed to rent the rental unit at a monthly rent of \$1800 per month.
- The tenant moved into the rental unit in the middle of May 2010, and has made the following payments:

Security deposit	\$900.00
June 2010 rent	\$1800.00
July 2010 rent	\$1800.00
August 2010 rent	\$0.00
September 2010 rent	\$0.00
October 2010 rent	\$0.00
November 2010 rent	\$0.00
December 2010 rent	\$0.00
Total	\$5400.00

- The tenant therefore presently owes \$9,000.00 in outstanding rent, and that is why the Notice to End Tenancy was issued on December 1, 2010.

The landlord is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that:

- He did agree to rent the rental unit at \$1800.00 per month and he moved in on May 15, 2010.
- He has made the following rent payments:

Security deposit payment	\$900.00
June 2010 rent payment	\$1800.00
July 2010 rent payment	\$1800.00
August 2010 rent payment (\$1400.00 overpayment)	\$3200.00
September 2010 rent payment	\$1800.00

October 2010 rent payment	\$1800.00
November 2010 rent payment	\$1000.00
December 2010 rent refused by landlord	\$0.00
Total	\$13200.00

- In July 2010 the landlord had loaned him \$3170.00, and therefore he paid \$3200.00 in August 2010, however the landlord told him that she was not going to apply that money towards the loan, that it would all be applied towards rent.
- The landlord has continued to insist that all payments he has made since that time would be applied towards rent and not towards the loan, and therefore since he was in a credit position he reduced the amount he paid in November 2010 and was planning to reduce the amount he paid in December 2010, however the landlord refused to accept a rent Cheque in December 2010 stating she would only accept cash.
- All payments made to the landlord have been in cash and the landlord has not issued any receipts for any payments.

The tenant is therefore requesting that the Notice to End Tenancy be cancelled, because all rent is up-to-date other than the remaining \$1200.00 December 2010 rent which has been refused by the landlord.

In response to the tenant's testimony the landlord stated:

- She reiterates that the tenant has made no payments in the month of August 2010, September 2010, October 2010, November 2010, and December 2010, either towards the rent or towards the money she loaned him.
- The \$9,000.00 outstanding is for rent only, and does not include the other money owed by the tenant.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Analysis

It is my decision that the tenant has not met the burden of proving that he has paid the \$9,000.00 in rent that the landlord claims is outstanding. The tenant claims to have paid all but \$1200.00 of the rent owed for the term of the tenancy, however he has supplied no evidence in support of his claim, and therefore it is basically his word against that of the landlords.

The burden of proving that rent has been paid lies with the tenant, and when it is just the tenants word against that of the landlord that burden of proof is not met.

Therefore it is my decision that I will not set aside the 10 day Notice to End Tenancy, and this tenancy ends pursuant to that notice.

Conclusion

The tenant's application to cancel a Notice to End Tenancy is dismissed without leave to reapply and I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

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 22, 2010.

Dispute Resolution Officer