



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR

Introduction

This was an application by the tenant to cancel a 10 day Notice to End Tenancy for unpaid rent. The hearing was conducted by conference call. The tenant and the landlord's representative participated in the hearing.

Issues(s) to be Decided

Should the Notice to End Tenancy dated October 29, 2010 be cancelled?

Background and Evidence

The rental unit in Surrey is under foreclosure proceedings. The tenancy began November 1, 2008. Monthly rent is \$1,500.00. The tenant paid a security deposit of 4750.00 at the commencement of the tenancy.

The tenant has not paid rent for October or November, 2010. He said that someone at the foreclosing bank told him to pay rent to the bank, not to his landlord and therefore has not paid rent to the landlord. Neither has he paid rent to the bank. The landlord produced copies of orders pronounced in the foreclosure proceedings; according to the landlord's representative no order has been granted directing that the rents be assigned to the bank.

The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on October 29, 2010 by posting it to the door of the rental unit. The tenant acknowledged that he received the Notice to End Tenancy.

The tenant testified that he no longer has funds available to pay the rent for October and November. He said that he intends to move out on December 1, 2010.

Analysis and Conclusion

The tenant acknowledged that he has not paid rent for October or November to the landlord or to the mortgagee bank. There is no order appointing a receiver of rents and the tenant acknowledged that he has not paid rent to any party for October or for November. He also admitted that he is unable to pay the rent in question.

On the Evidence before me I find that the landlord is entitled to the rent payments for October and November. The rent has not been paid; the tenant does not have the means to pay the rent and I therefore find that the Notice to End Tenancy should not be cancelled. The tenant's application to cancel the Notice is dismissed without leave to reapply. At the hearing the landlord's representative requested that I grant the landlord an order for possession in the event the application was dismissed.

I grant the landlord an order for possession effective two days after service on the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

Dated: November 24, 2010.
