



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed her Application seeking an order to cancel a 10 day Notice to End Tenancy for unpaid rent and to recover the filing fee for the Application.

The Landlord filed her Application requesting an order of possession based on unpaid rent, and requested monetary orders for unpaid rent, for alleged damages to the rental unit, for compensation under the Act or tenancy agreement for cleaning, to retain the security deposit in partial satisfaction of the claim 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.

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 Notice to End Tenancy for unpaid rent be cancelled or is it valid?

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 January 6, 2011.

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 cancel the Notice in her Application.

The Landlord testified that the monthly rent for the rental unit is \$1,000.00, which is due on the first day of the month, and the Tenant paid her a security deposit of \$500.00 on November 1, 2009.

In early January of 2011, there was a water leak in the rental unit and the Landlord reduced the rent by \$150.00, therefore the rent for January 2011, was to be \$850.00.

The Tenant paid the Landlord \$350.00 for rent on January 4, 2011, and agreed to pay the Landlord the balance due on January 6, 2011.

On January 6, 2011, the Tenant refused to pay the Landlord the balance due, as the Tenant claims the rental unit could not be lived in. The Tenant alleges there are rats in the rental unit and that it requires repairs. The Tenant wants the Landlord to provide her with a hotel room while the repairs are being made. The Tenant testified she withheld the rent as she feels the Landlord has to make these repairs. She feels the Landlord is trying to end the tenancy to do repairs on 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 Tenant has not paid all the rent due to the Landlord, and therefore, the 10 day Notice to End Tenancy is valid and should not be cancelled.

Under section 26 of the Act, the Tenant could not withhold rent unless she either had an order from the Residential Tenancy Branch allowing her to do so, or, if she had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no order, nor did she have any evidence she had paid for emergency repairs in accordance with section 33. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord.

Therefore, I dismiss the Application of the Tenant.

The effective date of the 10 day Notice to End Tenancy was January 16, 2011. Having found the Tenant has failed to pay all rent when due, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on January 28, 2011**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlord has established a total monetary claim of **\$550.00**, comprised of \$500.00 in rent due for January 2011, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$50.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, I note that the Landlord has applied for monetary compensation for alleged damages to the rental unit and for alleged cleaning of the rental unit. It was explained to the Landlord and Tenant at the hearing that these claims are premature, as the Tenant has a right under the Act to make repairs she is responsible for and to clean the rental unit up to the end of the tenancy. Therefore, these 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: January 26, 2011.

Residential Tenancy Branch