



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, FF, OLC, MNR, OPR

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

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

The landlord's application is a request for an Order of Possession based on Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$3400.00, and a request that the tenants bear the \$50.00 cost of the filing fee that the landlords paid for their application for dispute resolution.

The tenant's application is a request to cancel the Notice to End Tenancy, a request for an order for the landlord to comply with the residential tenancy act, and a request that the landlords bear the \$50.00 cost of the filing fee that the tenants paid for their application for dispute resolution.

Background and Evidence

On January 28, 2011 the landlord served the tenants with a 10 day Notice to End Tenancy for non-payment of rent.

The landlords testified that:

- Rent for this rental unit is \$1700.00 per month.
- The tenants have failed to pay any rent for the months of January 2011 and February 2011.
- Therefore they served the tenants with a 10 day Notice to End Tenancy; however to date the tenants have failed to vacate, and have failed to pay any of the outstanding rent.

The landlords are therefore requesting an Order of Possession for as soon as possible, and are requesting an order for the \$3400.00 in outstanding rent plus the \$50.00 filing fee, for a total of \$3450.00.

The tenants testified that:

- On December 31, 2010 they paid the landlord one half of the January 2011 rent in the amount of \$850.00.
- The landlord also informed them that they did not have to pay the rest of the January 2011 rent.
- Their son witnessed the rent payment.

They do not dispute the Order of Possession because they are vacating the rental unit however they do not believe they should have to pay any rent further.

The tenant's witness (son) testified that:

- He witnessed his parents pay the landlord \$850.00 on January 1, 2011.

In response to the tenants and witnesses testimony the landlord testified that:

- The tenant son could not have seen him collect \$850.00 from the tenants, because although he did go to collect rent that was outstanding for December 2010, the son informed him that his mother was not home and that he would have to go to his mother's workplace to collect the outstanding rent.
- He did therefore go to the tenant's workplace and did collect \$850.00 however this was rent still outstanding from the month of December 2010.
- He reiterates that no rent has been paid for the month of January 2011.
- He also never informed the tenants that they did not have to pay any further rent.

Analysis

The tenants are not disputing the request for an Order of Possession and therefore I have issued an Order of Possession to the landlords.

I also allow the landlords claim for \$3400.00 in outstanding rent, as I prefer their testimony in this matter.

The tenant's testimony conflicted with the testimony of their witness, because the tenants testified that they paid \$850.00 of January 2011 rent on **December 31, 2010**, and the tenants' witness (son) testified that he saw his parents pay \$850.00 to the landlords on **January 1, 2011**.

Further the tenants have provided no further evidence to support their claim that they paid \$850.00 of the January 2011 rent. They claim that the landlord never gives receipts, however they provided no bank records, withdrawal slips etc..

I also allow the landlords claim for the \$50.00 filing fee.

Conclusion

Landlord's application

I have issued an Order of Possession that is enforceable two days after service on the tenants. I have also issued a monetary order in the amount of \$3450.00.

Tenant's application

The tenant's application is dismissed in full without 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: February 16, 2011.

Residential Tenancy Branch