

DECISION

Dispute Codes CNR, FF, OP, MND, MNR, MNSD

Introduction

This is cross application by the Tenant and the Landlord. The Tenant has filed an application for dispute resolution to cancel a notice to end tenancy resulting from a 10 day notice to end tenancy for unpaid rent and a monetary order request for the recovery of the filing fee. The Landlord has filed an application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet damage deposit or security deposit and a request for an order of possession resulting from a mutual end to tenancy agreement.

Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to cancel the 10 day notice to end tenancy?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to an order of possession?

Background and Evidence

This tenancy began on August 1, 2010 on a fixed term tenancy of 1 year and then thereafter on a month to month basis. The monthly rent was \$1,275.00 payable on the 1st of each month. A security deposit of \$637.50 was paid at the beginning of the tenancy.

The Tenant has provided a copy of the 10 day notice to end the tenancy for unpaid rent. The Landlord states that he served this document on February 1, 2011 when the unpaid rent was due. The Tenant has stated and noted on the bottom of this notice that it was received on February 2, 2011. The notice displays an unpaid rent amount of \$1,275.00 due on February 1, 2011. The bottom portion of the notice has not been completed. The dispute address and the date of the effective move-out as well as the service provision are not filled out.

The Landlord is seeking to obtain an order of possession based upon a mutual end to tenancy agreement between the Landlord and the Tenant. The Tenant has provided an

original document dated January 8, 2011 signed by the Landlord and the two Tenants. The effective date of this agreement is shown as February 28, 2011 at 6:00pm. The Tenant states that the document was completed and that the Landlord provided to the Tenant a photocopy with the time of the move-out changed from 10:00pm to 6:00pm. The original document submitted by the Tenant displays no changes. In any event the date of the move-out is not in dispute.

The Landlord is seeking a monetary order request for unpaid rent for February 2011. The Landlord states that the Tenant has failed to pay rent of \$1,275.00. The Tenant does not dispute the non-payment.

The Landlord is also seeking \$600.00 for the cost of a broken door (in this case a screen door referred to in the Landlord's evidence of photograph # 5. The Landlord states that this is an estimate not based on any invoices or receipts. The Landlord stated that he called around to a few hardware stores, but have only given Rona Revy as an example where he states that he was quoted a replacement for screen doors to cost between \$200.00 to \$300.00, plus installation which he is estimating at \$300.00-\$400.00 based upon no quotes or estimates. The Tenant agrees that he "owes for the door". The Landlord states that the age of the door is approximately 12 years old.

Analysis

I am satisfied that as both parties attended the hearing by conference call that the notice of hearing was properly served. Neither party has disputed receiving the notice. Both parties as well confirm receipt of the evidence packages.

I find that the Landlord's 10 day notice to end the tenancy for unpaid rent was ineffective. Based upon the evidence provided by the Tenant, the notice was incomplete and the date of the notice for service was in doubt based upon the Landlord's direct evidence. The Landlord provided no explanation for this. I am satisfied that the Tenant's application to cancel the notice is justified and dismiss the notice. The Tenant having been successful is entitled to the recovery of the \$50.00 filing fee.

The Landlord has established a claim for the unpaid rent of \$1,275.00 as agreed upon by the Tenant in their direct evidence.

The Landlord's claim of \$600.00 for a broken screen door is I find excessive based upon the Landlord's photograph number 5 and the Landlord's undocumented quote. The screen door appears to be intact and the bottom portion of the screen is missing. I

am not satisfied that the repair of the door requires the cost being sought by the Landlord. The Landlord's claim is excessive and I find that the Landlord is only able to recover the cost of the missing screen portion. I grant to the Landlord \$40.00 as compensation for this damage.

The Landlord's request for an order of possession based upon the signed mutual agreement to end the tenancy. I am satisfied based upon the direct evidence of the Tenant that the signatures are those of the Landlord and Tenants and that the agreement was made to end the tenancy on February 28, 2011. As such, I grant the Landlord an order of possession for February 28, 2011 at 6:00pm as the agreement states.

As to the monetary order, I find that the Landlord has established a total claim of \$1,315.00. This amount is offset by the Tenant's success in cancelling the 10 day notice and recovery of the \$50.00 filing fee. The Landlord may retain the \$637.50 security deposit in partial satisfaction of this claim and I grant an order under section 67 for the balance due of \$627.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$627.50. The Landlord may retain the security deposit.

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 24, 2011.

Residential Tenancy Branch