



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This was the hearing of applications by the landlord and the tenant. The landlord applied for an order for possession and a monetary order. The tenant applied to cancel a Notice to End Tenancy for unpaid rent. The hearing was conducted by conference call. The tenant attended the hearing. The landlord was represented by his agent and the landlord appeared part way through the hearing to provide oral testimony.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled? Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order for unpaid rent and if so in what amount?

Background and Evidence

The rental unit is an apartment. The tenancy began in January, 2009 although the tenant moved into the rental unit near the end of December, 2008. Monthly rent is \$750.00. the tenant paid the sum of \$130.00 as a security deposit.

The tenant paid only \$600.00 rent for October, 2010 on October 14th. He paid \$600.00 for November and \$600.00 for December. He paid no rent for January. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on December 28, 2010.

The tenant applied to dispute the Notice to End Tenancy. The tenant testified that that after he became unemployed and his employment insurance benefits ran out in October he began to receive social assistance benefits. The tenant testified that the landlord agreed to accept a discounted rent of \$600.00 per month instead of \$750.00 while the tenant was receiving social assistance. The tenant said that he was to repay the full rental amount when he became employed. The tenant alleged that the landlord told him that the landlord's son-in-law could pay the rent and the landlord wanted to rent the suite to him. The tenant said that it was after this statement that the landlord served the Notice to End Tenancy dated December 28, 2010.

The landlord testified that he agreed to accept a discounted rent, based on the tenant's promise to pay the remainder of the rent when he sold his car. The landlord said the tenant sold his car but did not pay the rent arrears. The tenant said that he did not sell his car; it was repossessed. The tenant alleged that the landlord attempted to provoke the tenant into assaulting him when he served the Notice to End Tenancy to the tenant on December 28, 2010.

Analysis and Conclusion

On the evidence of the parties the landlord did not agree to accept a reduced amount of rent in full satisfaction of the tenant's obligation to pay the larger amount; the tenant was still responsible for the full monthly rent of \$750.00. There was no discussion as to the duration of the arrangement. The landlord accepted \$600.00 from the tenant in October, November and December.

There was no benefit or consideration offered to the landlord by the tenant for the landlord's agreement to accept a reduced rent and given the absence of consideration and the absence of any time limit to the arrangement I find that the landlord was entitled to inform the tenant at any time that he was not willing to allow the tenancy to continue at a discounted rent. The landlord so informed the tenant by giving him a Notice to End

Tenancy on December 28, 2010. The tenant did not pay the rental arrears within the time provided and I find that there is no basis to cancel the Notice to End Tenancy. The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply. Based on the above facts I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord has established a claim for unpaid rent totalling \$1,200.00 for the months of October, November and December, 2010 and January, 2010. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,250.00. I order that the landlord retain the deposit and interest of \$130.00 and I grant the landlord an order under section 67 for the balance due of \$1,120.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 19, 2011.
