



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

The Tenant filed seeking an Order to cancel the Notice to End Tenancy for unpaid rent.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?
3. If not, have the Tenants met the burden of proof to cancel the Notice to End Tenancy?

Background and Evidence

At the outset of the hearing the Landlord advised that on January 21, 2011, the Tenants have paid their rent in full. The Landlord issued a receipt to the Tenants which states "rent balance paid to the end of January 2011". The Landlord confirmed the tenancy has been reinstated and if they fail to pay their February rent on time he will take action to evict them.

Analysis

Landlord's application

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

In these circumstances the Landlord was able to accept rent for the period up to January 12, 2011 without waiving the 10 Day Notice to End Tenancy. If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue. In these circumstances the Landlord had accepted the amount of rent owed of \$600.00, which is for the entire month of January and exceeds the amount that was due up to January 12, 2011. This amount was not accepted for "use and occupancy only"; therefore, I find the Landlord has reinstated the tenancy and the 10 Day Notice to End Tenancy is now void and of no force or effect. Having found the Notice to be void, I hereby dismiss the Landlord's application, without leave to reapply.

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

The 10 Day Notice to End Tenancy dated January 2, 2011 is hereby cancelled and is of no force or effect.

I HEREBY DISMISS the Landlord's application, without leave to reapply.

I HEREBY DISMISS the Tenants' application, 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 01, 2011.

Residential Tenancy Branch