



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR
 MT CNC

Introduction

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

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Tenant filed seeking more time to make her application and an Order to cancel a notice to end tenancy for cause and for other reasons.

The parties appeared at the teleconference hearing, provided affirmed testimony, confirmed service of hearing documents, confirmed receipt of evidence submitted by the other, were provided the opportunity to provide their evidence, orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Do these applications fall within the jurisdiction of the *Residential Tenancy Act*?
2. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
3. If so, has the Landlord met the burden of proof for an Order of Possession and Monetary Order for unpaid rent as a result of that breach?
4. If not, has the Tenant met the burden of proof to cancel a notice to end tenancy issued for cause?

Background and Evidence

I heard undisputed testimony that the Landlord had the property for sale and the Tenant contacted her and discussed renting the property before entering into an agreement to purchase the property. The Tenant confirmed that she wanted to rent the property first to see if her grooming business would cover the cost of a mortgage.

The parties entered into a written month to month tenancy agreement effective October 1, 2010. Rent is payable on the first of each month in the amount of \$1,600.00. The Tenant did not pay the \$800.00 security deposit and did not pay the \$800.00 pet deposit that was supposed to be paid by November 15, 2010.

The Landlord testified the October 1, 2010 rent was paid in full. Then rent began to be short paid as follows:

DATE	AMOUNT PAID	BALANCE DUE
December 17, 2010	\$800.00	\$1,800.00
January 2011	NIL	\$3,400.00
February 2011	NIL	\$5,000.00

A 10 Day Notice to End Tenancy was issued December 20, 2010 and served to the Tenant via registered mail on December 29, 2010, as supported by the Landlord's documentary evidence. The Tenant confirmed receipt of the 10 Day Notice.

The Tenant made application for more time to apply and to request to cancel a Notice to End Tenancy issued for cause. The Tenant confirmed she was never served a Notice to End Tenancy for Cause.

Analysis

The parties confirmed they had discussions about the Tenant possibly purchasing the property. I accept that no terms or agreement for purchase of the property was entered into as the Tenant chose to rent the property for a period of time to see if her business would be profitable. The parties then entered into a written tenancy agreement which clearly indicates the owner of the property is the Landlord and the respondent to this application is the Tenant. There was no consensus between these two parties pertaining to the transfer of interest in this property nor are the payments of rent connected to the sale or transfer of the property. Therefore, I find the parties entered into a valid tenancy agreement under the *Residential Tenancy Act* and I hereby accept jurisdiction of the matter(s) before me.

All of the testimony and documentary evidence was carefully considered, which included among other things, a copy of the tenancy agreement, a copy of the 10 Day Notice dated December 20, 2010, a copy of the proof of service form, and the Tenant's written statement.

Landlord's Application

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

Order of Possession – The evidence supports the Tenant failed to pay rent in accordance with section 26 of the *Act* and the tenancy agreement. A 10 Day Notice was issued pursuant to section 46 of the *Act* and the Tenant failed to make application to cancel the 10 Day Notice and failed to pay the rent in full within five days of receipt of the Notice. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for accumulated unpaid rent of \$5,000.00 from November 2010 to February 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find that the Landlord has proven the test for loss as listed above and I hereby approve her claim for unpaid rent of **\$5,000.00**.

Tenant's Application

The Tenant made application to cancel a Notice to End Tenancy for Cause, which has never been issued to her; therefore I dismiss the Tenant's application, without leave to reapply.

Conclusion

Landlords' Application

The Landlord's decision will be accompanied by an Order of Possession effective **2 days upon service** to the Tenant. This Order must be served to the Tenant and may be filed with Supreme Court and enforced as an Order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$5,000.00**. The order must be served on the Tenant and is enforceable through the Provincial Court as an order of that Court.

Tenants' Application

The Tenant's application is HEREBY DISMISSED, 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 02, 2011.

Residential Tenancy Branch