



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPT, AAT, FF, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order of possession of the rental unit or site; for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; and to recover the filing fee from the landlord for the cost of this application.

The parties both attended the conference call hearing and gave affirmed testimony. The landlord provided an evidence package in advance of the hearing, however did not provide it to the Residential Tenancy Branch or to the tenant within the time prescribed in the Rules of Evidence. The tenant objected to the inclusion of that evidence, and that evidence is therefore not considered in this Decision. All other information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Is the tenant entitled to an Order of Possession of the rental unit or site?

Is the tenant entitled to an order allowing access to (or from) the unit or site for the tenant or the tenant's guests?

Background and Evidence

At the outset of the hearing, the landlord testified that the parties had a previous hearing on February 24, 2011 wherein the landlord was granted an Order of Possession.

The tenant testified that the tenancy began on August 1, 2009, and that rent in the amount of \$310.00 per month is payable in advance on the 1st day of each month. The

tenant states that the named landlord is not his landlord, although he moved into a house with her that she had previously rented.

The tenant is a farmer and has numerous plants, worms and gardening materials at the house, along with most of his larger furniture items. The tenant has not removed the larger items from the house and applies for an order permitting him access to and from the rental unit to recover the remaining belongings. He further testified that the named landlord has a restraining order against him, and that he would be able to retrieve his belongings if she were not there. He asks for an order effective March 19, 2011.

The tenant also testified that his ex-girlfriend, a friend and his cousin all attended at the rental unit to retrieve his most immediately required belongings on January 21, 2011. Then on January 23, 2011 he paid his ex-girlfriend \$80.00 who attended with a friend and collected some plants. On January 25, 2011 his cousin and a friend attended to retrieve some items. He went there again with a friend, with the landlord's permission, on February 2, 2011, and on February 4, 2011 his ex-girlfriend went to get toys. Also a friend attended the unit on the 8th of February and again on the 14th of February.

The landlord testified that the tenant promised to be out of the rental unit at the end of January, 2011 and have his belongings out right away. He then promised the have his belongings moved by February 5, 2011. She stated that her daughter fears him, and she wants his belongings out immediately.

Analysis

Because the issue of possession has already been dealt with, I find that the tenant's applications for an order cancelling a notice to end tenancy and for an Order of Possession of the rental unit or site, has already been decided and res judicata applies. The tenant's applications for those orders must be dismissed.

With respect to the tenant's application allowing access to and from the rental unit, I find that the tenant has had sufficient time to retrieve his belongings. I further find that the tenant has no other reason for attending the unit since an Order of Possession has already been granted in favour of the landlord. The landlord is not required to store the tenant's belongings in her home. Further, the landlord is at liberty to enforce the Order of Possession and obtain the services of a Court Bailiff to remove those items.

Conclusion

For the reasons set out above, the tenant's application is dismissed in its entirety 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: March 03, 2011.

Residential Tenancy Branch