



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, OPC, MNR, MNSD, CNR, CNC, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to Section 55 and a monetary order for rent owed. The tenant applied for an order to cancel the Notice To End Tenancy For Unpaid Rent, pursuant to Section 46 and an order to cancel the One Month Notice to End Tenancy for Cause.

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

At the outset of the hearing the landlord advised that the tenant had paid the outstanding rent in full beyond the five-day deadline and was issued with a receipt for “use and occupancy only”. Therefore the landlord’s monetary claim has been withdrawn with the exception of the cost of filing the application.

Issues to be decided: Landlord’s Application

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to an order of possession based on the Notice for Cause?

Issues to be decided: Tenant’s Application

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?
- Has the tenant proven that the Notice to End Tenancy for Cause should be cancelled?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in March 2003. The landlord acknowledged that the tenant had paid a security

deposit of \$475.00 at the commencement of the tenancy. The rent is \$1,300.00.

The landlord testified that a One Month Notice to End Tenancy for Cause was issued and served on February 28, 2011. The landlord testified that on March 1, 2011 the landlord made attempts to collect the rent without success and on March 3, 2011, the landlord issued and served a Ten-Day Notice to end Tenancy for Unpaid Rent. The landlord testified that the tenant paid the rental arrears on March 9, 2011, which was beyond the five-day deadline to cancel the Notice. The rent was paid in full, but the landlord still seeks an Order of Possession.

The tenant acknowledged not paying the rent when it was due but stated that the landlord came in person to collect the rent without first notifying the tenant to ensure that the tenant would be home at the time. The tenant stated that he did receive the Ten Day Notice to End Tenancy for Unpaid Rent on March 3, 2011 and had intended to pay the arrears by March 8, 2011, but mistakenly failed to put the cheque in the envelope. However, he did deliver the cheque on March 9, 2011.

Analysis: Ten-Day Notice

Based on the testimony and evidence of both parties, I find that the tenant was in arrears for rent for the month of March 2011 and did not pay the arrears within the five-days to cancel the Notice.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this instance, I find that the tenant failed to pay the rent in violation of the Act. The tenant had five days to pay to cancel the Ten-Day Notice and did not do so. Accordingly, I find that the Ten-Day Notice to End Tenancy was warranted and that there is no justification under the Act to cancel the Notice.

As I have determined that the Notice to End Tenancy shall be upheld, I find that the portion of the tenant's application relating to the request for an order to cancel the Ten-Day Notice must be dismissed. Accordingly I find that the Ten-Day Notice is valid and the landlord is entitled to an Order of Possession.

I find that the landlord has established a monetary claim for the \$50.00 fee paid by the landlord for this application.

Conclusion

Pursuant to section 55(2), I hereby issue an Order of Possession in favour of the Landlord effective April 30, 2011 at 1:00 p.m.

I order that the landlord may retain \$50.00 from the tenant's the security deposit and interest for the cost of the application.

The tenant's application is 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: March 2011.

Residential Tenancy Branch