



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes – OPR, CNR, MNR, MNSD, ERP, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and a monetary order. The tenant applied to cancel a notice to end tenancy and for an order to have the landlord make repairs and emergency repairs.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The tenant asserted that he did not find out about this hearing until he talked to the Residential Tenancy Branch (RTB) and they informed him of the landlord's Application.

The landlord had submitted into evidence tracking information on all registered mail sent to the tenant regarding this dispute. Most of the packages were returned as unclaimed and one was returned as refused by the tenant.

The tenant testified that he has a disability and it is difficult to get out to go to a postal outlet to pick up any packages and that on the one item that was refused he stated that he never accepts registered mail from anyone.

Despite the tenant's claim's that he received no notice of this hearing, I find this is a direct result of his inaction to obtain items that he had received notice were waiting for him and by his direct refusal of a registered mail package. I find the landlord has sufficiently served the tenant with notice of this hearing for the purposes of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; for the tenancy to continue and if it continues if the tenant is entitled to an order that requires the landlord to make repairs and emergency and repairs, and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 46, 67, and 72 of the Act.

Background and Evidence

The parties agree the tenancy began on October 1, 2010 as a month to month tenancy for a monthly rent of \$1,150.00 due on the 1st of the month and that a security deposit of \$350.00 was paid on August 27, 2011.

The landlord submitted into evidence the following:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 2, 2011 with an effective vacancy date of February 12, 2011 due to \$1,550.00 in unpaid rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 3, 2011 with an effective vacancy date of March 13, 2011 due to \$1,550.00 in unpaid rent and \$332.37 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of January, February and March 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2011 personally on February 2, 2011.

The landlord testified that the tenant did pay \$1,150.00 on February 7, 2011 and that when he failed to pay the March 2011 rent; the arrears held over from January and the utilities by March 3, 2011, she issued a new 10 Day Notice to End Tenancy for Unpaid Rent. The parties disagree as to the method of service – the landlord states she served the tenant in person and the tenant states he got it out of his mailbox. The tenant testified he received the Notice on March 3, 2011.

The landlord testified the tenant paid \$1,150.00 but to date has not paid the additional previously owed \$400.00 or the utilities. The tenant confirmed that he had not paid this amount. He states that he told the landlord he would have this amount by March 18, 2011. He states the landlord did not get a hold of him and now he no longer has the money to pay the landlord. The landlord testified she did try to reach the tenant but could not.

The Notice states that the tenant had five days to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end. The tenant applied to dispute the Notice to End Tenancy on March 24, 2011.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as agreed by both parties. The notice was received by the tenant on March 3, 2011 and the effective date of the notice was March 13, 2011. I accept the evidence before me that the tenant failed to pay the full rent and utilities owed in full or apply to dispute the Notice within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

As a result of the above, I dismiss the tenant's Application in its entirety, without leave to reapply.

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$835.35** comprised of \$400.00 rent owed; \$385.35 utilities and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$350.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$485.35**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: April 11, 2011.

Residential Tenancy Branch