



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPR, OPC, MNR, MNSD, FF
For the Tenant: CNR, MNDC, ERP, RP, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for unpaid rent and to retain the security deposit, for an order of possession and to recover the filing fee.

The Tenant applied to cancel a notice to end tenancy for unpaid rent and for cause, for an order to have the Landlord complete emergency repairs and repairs, for a monetary order for damage or loss, for an order allowing the Tenant to change the locks, allowing the Tenant a rent reduction and to recover the filing fee.

The Landlord and the Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

On a procedural note, after commencement of the hearing, the Tenant repeatedly interrupted the conference with antagonistic remarks, despite numerous warnings. As a result, I allowed the Tenant to stay in the conference, but after some testimony, the Tenant was placed on mute for the duration of the hearing.

Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (the “Act”) or tenancy agreement, entitling the Landlord to an order for monetary relief and for an order of possession?

Is the Tenant entitled to cancel a notice to end tenancy for unpaid rent and for cause, for an order requiring the Landlord to make emergency repairs and repairs, for an order allowing the Tenant to change the locks, allowing the Tenant a rent reduction, and to recover the filing fee?

Background and Evidence

Although there was a written tenancy agreement entered into evidence, contrary to that tenancy agreement, I heard testimony that this tenancy began in July 1, 2009, rent is \$450.00 per month, and the Tenant paid a security deposit of \$225.00 in July 2009.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the Landlord was offered the opportunity to proceed first; however his testimony was consistently interrupted by the Tenant.

The Landlord testified and supplied evidence that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on May 2, 2011, by posting on the door. The Notice stated the amount of unpaid rent as of May 1, 2011, was \$450.00 and the stated effective move out date was listed as May 12, 2011. The Act states that a document delivered by posting on the door is deemed served three days later. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to February 15, 2011.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant has not paid since the issuance of the Notice, which now includes June 2011, and that his total monetary claim is \$950.00, which includes rent for May and June and the filing fee.

The Tenant agreed that he did not pay rent in May or June 2011, and submitted that he did not have to pay rent because the rental unit, as a person with disabilities, was putting his health at risk.

The Tenant stated that he has been attempting to have the Landlord make repairs for two years, without success, and that the rental unit was not fit to live in, due to a sewer back-up and mould, among other issues.

Despite his testimony that he has notified the Landlord, in writing, the Tenant supplied no evidence other than a copy of the Notice and the 1 Month Notice to End Tenancy for Cause.

In response, the Landlord denied that he has been contacted by the Tenant about all these issues, and at one point, when the Landlord attended the rental unit to make a minor repair, the Tenant ordered him not to come back.

The Landlord further denied that the rental unit was in a state requiring repairs and emergency repairs.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's Application

Under section 26 of the Act, the Tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the Landlord's consent for deduction; authorization from a dispute resolution officer or expenditures incurred to make an "emergency repair", as defined by the Act. As the Tenant has not submitted evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, he has not met this criteria.

Where Tenant fails to pay rent when due, the Landlord may serve the Tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the Tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the Tenant disputed the Notice within five days. Where a Notice is disputed, the Tenant must be able to show that he does not owe the Landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the Tenant owed the Landlord rent when the Notice was issued, that he did not pay all or any of the rent owed to the Landlord within five days of receiving the Notice and the Tenant did not establish that he had the legal right to withhold the rent owed. Therefore, I find the tenancy has ended for the Tenant's failure to pay rent and the Landlord is entitled to regain possession of the rental unit. The Landlord is provided with an Order of Possession effective **2 days** after service on the Tenant.

This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$950.00** comprised of outstanding rent for May and June of **\$900.00** and the **\$50.00** fee paid by the Landlord for this application.

I allow the Landlord to retain the security deposit of \$225.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$725.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenant's Application

As I have upheld the Landlord's Notice to End Tenancy for Unpaid Rent for the foregoing reasons, I **dismiss** that portion of the Tenant's application to cancel the Notice.

As to the Tenant's request for an order for repairs and emergency repairs, for a monetary order, for a rent reduction, and an order allowing a rent reduction, the Tenant supplied no evidence in support of this portion of his application.

I find that, in any dispute when the evidence, in this case evidence supporting the Tenant's claim, consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

For these reasons, I **dismiss** the Tenant's application in its entirety, without leave to reapply.

Conclusion

The Landlord is granted an Order of Possession and a monetary order in the amount of **\$725.00**.

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: June 02, 2011.

Residential Tenancy Branch