



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy.

By the landlord: as a cross application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant submitted 5 pages of evidence to the Residential Tenancy Branch on the date of the hearing. The submission of late evidence is a clear violation of the Rules of Procedure. After hearing the parties' testimony, I find that it would be unduly prejudiced to accept the tenant's late evidence and therefore it is not considered in my decision. I did however consider the tenant's testimony at the hearing.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement not provided as evidence, the landlord testified that the month to month tenancy started January 27th, 2011. The rent is \$700.00 per month and the tenant paid a security deposit of \$350.00. The landlord stated he receives the tenant's cheque from Social Services from which he cashes, takes the portion of the rent and gives the tenant the balance. The landlord said that the tenant did not pay rent for May or June 2011; he said that on June 12th, 2011 the tenant gave him a late cheque for June but that \$700.00 remains outstanding for May. When he asked for the rent on May 3rd, 2011, the landlord said that the tenant told him he would have it in five days.

The tenant testified that he gave the landlord cash for May's rent on the 3rd, and that the landlord refused to sign a receipt that the tenant had completed. He stated that the landlord is trying to get rid of him because he is a smoker.

Analysis

I note that although dated the same day, each party provided a copy of a different 10 Day Notice to End Tenancy. The landlord bears the burden to prove his claim that the tenant did not pay rent for May 2011. The landlord stated that he did not issue receipts because the tenant never requested any. When one party's testimony contradicts the other party's, the party making the claim must provide sufficient evidence to support his claim. Section 26(2) of the Act states that a landlord must provide a tenant with a receipt for rent paid in cash. With no documentary evidence to support his claim, I am left with contradicting oral testimonies and therefore the landlord's claim must fail.

Conclusion

The landlord's application is dismissed with leave to reapply and the tenancy will continue.

The tenant's application is upheld and the notice to end the tenancy is cancelled.

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 20, 2011.

Residential Tenancy Branch