



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a 10 day Notice to End Tenancy, for a monetary order for rent reduction and for an order reducing the rent.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenant established an entitlement to cancel the 10 Day Notice for Unpaid Rent, for an Order for a rent reduction, and a monetary order for rent reduction?

Background and Evidence

The evidence and testimony indicates that this one year, fixed term tenancy started on April 1, 2010, monthly rent is \$770.00, and the tenant paid a security deposit of \$375.00 on April 1, 2010, and a pet damage deposit of \$375.00 on April 3, 2010.

Pursuant to the Rules of Procedure, the landlord proceeded first to in the hearing to explain why the 10 Day Notice to End Tenancy (the "Notice") was issued.

The landlord testified that tenant was served with a 10 Notice to End Tenancy for non-payment of rent (the "Notice") on July 2, 2011, via posting on the door and through the tenant's mail slot. The Notice contained a stated effective move-out date of July 12, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the Notice. The tenant's application date indicated he did not file to dispute the Notice within the five days. However, testimony was taken concerning the payment of rent.

The landlord provided affirmed testimony that the tenant did not pay the rent due listed on the Notice, \$810.00, and currently owed for August 2011. The landlord stated that the amount of \$810.00 included a \$25.00 for a late fee and \$15.00 for an outstanding administrative fee and that the tenant did not have the landlord's permission to withhold rent

The tenant acknowledged receipt of the Notice and that he did not pay the outstanding rent. However, the tenant stated he did not believe he had to pay rent as the toilet, stove and refrigerator were not working. The tenant stated that the refrigerator has not worked properly since moving in, and the stove and toilet are not working now.

The tenant further testified that he has asked the property managers since moving in to repair these items, but that the items are still not working.

The tenant stated that he has put his requests for repairs in writing, though no letters were submitted into evidence. Further, the tenant has submitted no evidence in support of his application.

In response, the landlord stated that all repairs are timely made, when asked by a tenant. The landlord submitted that the tenant has not made the requests for repairs.

Analysis

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

In addressing the tenant's Application as follows:

Rent Reduction:

When making a claim for damages or loss under a tenancy agreement or the *Act*, the party making the allegations, the tenant in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant has submitted insufficient evidence and has therefore failed to prove or establish any of the four elements necessary for an award for monetary compensation.

Although the tenant testified that he has written a letter to the landlord requesting repairs, the tenant has not supplied this or any evidence for dispute resolution. Further, the landlord denied the tenant wrote a letter.

Disputed verbal testimony does not sufficiently meet the tenant's burden of proof. Therefore due to insufficient evidence, I am unable to grant the tenant monetary

compensation and I **dismiss** his Application for a rent reduction as well as for a monetary order.

10 Day Notice to End Tenancy:

Under section 26 of the Act, a 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. The tenant has not submitted evidence that he had a legal right to withhold rent.

Where a 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 did not dispute the Notice within five days nor was he able to show that he did not owe the landlord rent or had some other legal right to withhold rent.

Therefore, as I find the tenancy has ended for the tenant's failure to pay rent, I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply.

At the landlord's written and verbal request at the hearing, 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.

Conclusion

The tenant's Application is dismissed.

The landlord is granted an order of possession.

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: August 08, 2011.

Residential Tenancy Branch