



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and to recover the filing fee.

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

Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

In support of her application, the landlord presented no evidence.

I heard testimony that this 6 month, fixed term tenancy started on December 18, 2010, continued thereafter on a month to month basis, monthly rent is \$650.00 payable on the 15th or 18th day of the month, and a security deposit of \$325.00 was paid by the tenant at the beginning on December 18, 2010.

The landlord gave affirmed testimony that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on August 23, 2011, via personal delivery. The Notice stated the amount of unpaid rent was \$650.00.

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 attempted to pay rent on the day the Notice was delivered, August 23, 2011, but that she refused payment of rent, informing the tenant she wanted to wait to "see what the Residential Tenancy Branch had to say."

The landlord further testified that she also refused the September payment of rent from the tenant. The landlord stated she wanted the tenant out of the rental unit and therefore that was the reason she refused the rent payment.

The tenant confirmed he attempted to pay rent and the payments were refused.

The tenant also stated he had other issues with the tenancy.

Analysis

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

Under section 47 of the Act, the tenant is permitted to pay the rent due within five (5) day of receiving a 10 Day Notice to End Tenancy for Unpaid Rent. If the tenant pays the rent due, the Notice has no effect.

The landlord is not permitted under the Act to refuse rent payments in order to end a tenancy. I therefore find that the landlord' application has no merit and I **dismiss** the landlord's application, in its entirety, **without leave to reapply**.

I also order that the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on August 23, 2011, is **cancelled** and of no force or effect, with the effect that this tenancy continues until it may otherwise end under the Act.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent 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: September 30, 2011.

Residential Tenancy Branch