



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, DRI, CNR, ERP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed his Application requesting an order of possession for unpaid rent, a monetary order for unpaid rent or utilities and to recover the filing fee for the Application.

The Tenant filed his Application to dispute an additional rent increase, to cancel a Notice to End Tenancy for unpaid rent, for an order for the Landlord to make repairs to the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

Preliminary Issues

The Landlord has requested a monetary order for unpaid utilities. The parties had a previous hearing before a different Officer on July 14, 2011, and the Landlord's claim for utilities was dismissed in that hearing. I find the Landlord has made the same claim in this Application as was made in the previous hearing. Therefore, I dismiss the Landlord's claim against utilities, as it was previously determined and I have no authority to overturn that decision (*res judicata*).

In addition to his request to cancel the Notice to End Tenancy, the Tenant has claimed he has overpaid rent and the Landlord has not kept up the yard, or done other repairs at the property as requested by the Tenant. I find that the claims of overpayment of rent and for orders against the Landlord for repairs are unrelated to the main dispute, and I dismiss these with leave to reapply, pursuant to section 2.3 of the rules of procedure.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Tenant gave the Landlord a letter, dated August 1, 2011, informing the Landlord he was withholding rent, "... to retrieve unjustifiable increases to my rent...". The Tenant states he will not pay rent until he has received \$2,600.00 from the Landlord. A copy of the letter was entered in evidence.

On August 3, 2011, the Landlord served the Tenant with a Notice to End Tenancy for unpaid rent for August of 2011.

The Tenant applied to cancel the Notice to End Tenancy on August 8, 2011.

The Landlord testified the Tenant has not paid rent for September of 2011 either.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Tenant has breached the Act by failing to pay rent when due.

Under section 26 of the Act, the Tenant may not withhold rent even if the Landlord is in breach of the Act. Even if the Landlord has overcharged for rent, as alleged by the Tenant, the Tenant may not withhold rent unless he has an Order from a Dispute Resolution Officer allowing him to do so, or he has made emergency repairs under the Act. The Tenant has no such Order and did not make any emergency repairs in accordance with the Act.

Therefore, having found the Tenant breached the Act by not paying rent, I grant the Landlord's Application and issue an order of possession effective upon two days service.

Furthermore, I find the Tenant owes the Landlord the sum of **\$2,150.00**, comprised of two months rent at \$1,050.00 for August and September and the \$50.00 filing fee for the Application. I grant the Landlord an order in those terms.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 08, 2011.

Residential Tenancy Branch