



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNC, CNR, FF, LAT, LRE

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with landlords request for an Order of Possession and a monetary order for outstanding rent and I will deal with the tenants request for an order to cancel a Notice to End Tenancy. I will also deal with both a request for recovery of the filing fees. I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

The landlord testified that:

- The rent of \$1400.00 per month is outstanding for the months of August 2011, July 2011, and October 2011, for a total of \$4350.00.
- The tenant was served with a 10 day Notice to End Tenancy for non-payment of rent which was posted on the tenant's door on September 6, 2011.
- To date, the tenants have failed to comply with the 10 day Notice to End Tenancy and have also failed to pay any of the outstanding rent.

The landlords are therefore requesting an Order of Possession for as soon as possible, an order for the outstanding rent of \$4350.00 plus their filing fee of \$50.00, and an order to retain the full security deposit of \$725.00 towards this claim.

The tenant testified that:

- He does not dispute that this rent is outstanding, however the landlord was sent cheques to cover the outstanding rent, by mail on August 26, 2011.
- He did receive a 10 day Notice to End Tenancy that the landlord posted on his door on September 6, 2011 however he did not find it until September 10, 2011.
- He did not put a stop payment on the cheques he had issued and attempt to pay the outstanding rent by some other method, because he believes the landlord just wants them out anyway.
- He therefore decided not to pay the outstanding rent until a decision was made at this hearing.

The tenant is therefore requesting that the Notice to End Tenancy be cancelled, because he had already sent the landlord post-dated cheques for the outstanding rent.

In response to the tenant's testimony the landlord testified that:

- He has never received any cheques in the mail from the tenant and the only rent cheque he has received from the tenant was for the July 2011 rent.

- Just prior to serving the tenant with the Notice to End Tenancy he informed the tenant that he had never received any cheques in the mail.

Analysis

Both sides agree that, at this time, there is \$4350.00 in outstanding rent.

It is my finding however the tenant has not met the burden of proving that he has ever supplied the landlord with rent cheques to cover this outstanding rent.

I accept the landlord's claim that he has never received any rent cheques in the mail to cover the outstanding rent as I find it very unlikely that he would not have cash the cheques had they been supplied.

Further if the rent really was available, the tenant had the opportunity to pay the outstanding rent to the landlord within five days of receiving the Notice to End Tenancy and that would have voided the notice; however the tenant made no attempt to pay the outstanding rent after receiving the Notice to End Tenancy.

Therefore it is my decision that I will not set aside the Notice to End Tenancy and this tenancy ends pursuant to that notice.

Conclusion

Tenant's application

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply and I further order that the tenants bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

Landlord's application

I have issued an Order of Possession to the landlords that is enforceable two days after service on the tenants.

I also allow the landlords full monetary claim of \$4400.00, and I therefore order that the landlords may retain the full security deposit of \$725.00 and have issued a monetary order in the amount of \$3675.00.

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: October 13, 2011.

Residential Tenancy Branch