

DECISION

Dispute Codes CNR, RP

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for unpaid rent and action by the Landlord to make repairs to the unit, site or property.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing it was learned that the Tenant failed to serve her evidence package on the Landlord. The Landlord confirms that no evidence was received from the Tenant and has filed no evidence on his own behalf. The Residential Tenancy Branch Rules of Procedure 11.5 (b). The Dispute Resolution Officer may refuse the consideration of evidence not provided to the other party if the acceptance of the evidence would prejudice the other party. I find in this circumstance that the Tenant has failed to provide her evidence and that the Landlord would be prejudiced as he has not had an opportunity to respond to the Tenant's evidence. As such, no consideration shall be given to the Tenant's documentary evidence. The hearing shall continue based upon direct testimony.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for unpaid rent?

Background and Evidence

Both parties agreed that a 10 day notice to end tenancy for unpaid rent was served on the Tenant on October 19, 2011. The notice displays an effective date of October 30, 2011 and an unpaid rent portion of \$500.00 that was outstanding from a monthly rent of \$700.00.

The Tenant claims that there is a signed tenancy agreement. The Landlord disputes this stating that nothing was in writing and only a verbal agreement existed. The Tenant states that she paid the outstanding amount. The Landlord disputes this stating that the Tenant paid the November rent of \$700.00 and a \$100.00 overage was applied to the October arrears of \$500.00 making the current arrears \$400.00 for unpaid rent from October 2011.

The Tenant also claims that verbal notice was given to the Landlord sometime in September 2011 to re-hang a bedroom door, a closet door, venetian blinds and a towel

rod in the bathroom. The Tenant seeks action by the Landlord to perform these promised services. The Landlord disputes that he received any notice to deal with repairs. He notes that all of these items were removed for the convenience of the Tenant during her move-in. The Landlord states that he is willing to attend on the day after the hearing to deal with these issues. The Tenant states that she is content with this proposal by the Landlord to deal with the listed 4 items.

Analysis

As both parties have attended the hearing by conference call, I am satisfied that the Landlord was properly served with the notice of hearing documents.

Both parties rely strictly on direct testimony. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the Tenant must prove her claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. When questioned about each other's oral testimony, both parties would offer a contradictory version of the events. In addition, with no documentary evidence to support their claim, I'm left with just their oral testimony. I found both parties to be contradictory in their evidence and unreliable. The Tenant's application to cancel the notice to end the tenancy is dismissed without leave to reapply.

As both parties are content to deal with the Tenant's list of 4 items, I find that no further action is required for this portion of the application.

Conclusion

The Tenant's application to cancel the notice to end tenancy is dismissed without leave to reapply.

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: November 15, 2011.

Residential Tenancy Branch