



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RP, RR, OPR, OPC, MNR, FF

Introduction

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

The Landlord applied for an order of possession based on Notices issued for unpaid rent and repeated late payment of rent, for a monetary order for unpaid rent and to recover the filing fee for the Application.

The Tenant applied to cancel both the Notice to End Tenancy for unpaid rent (10 day) and the one for repeated late payment of rent (one month).

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 note the Landlord did not provide a copy of his evidence to the Tenant prior to the hearing, therefore, the full amount of rent owed to the Landlord could not be determined. The Landlord has leave to apply for further monetary orders for rent.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Was the Tenant justified in withholding his rent?

Background and Evidence

The Landlord testified that the initial rent agreed to between the parties was \$700.00 per month. Later in the tenancy, the Landlord and the Tenant agreed that the rent should be reduced to \$500.00 per month to allow the Tenant \$200.00 per month to do maintenance on the rental unit.

The Landlord alleges the Tenant owes him for missed reduced rent payments dating back to January of 2011, in the amount of \$3,545.00. The Landlord has issued the Tenant two Notices to End Tenancy. The Landlord issued a 10 day Notice to End Tenancy for unpaid rent in September of 2011, with an incorrect effective date. Under

the Act the effective date corrected to September 11, 2011. The Landlord also issued a one month Notice to End Tenancy for repeated late payment of rent to the Tenant.

The Tenant testified that he began withholding rent in August of 2011, and had not paid it for September or October as well. He complained that the rental unit had not had heat in it since 2007. He testified he had not made an Application, prior to this present one, to compel the Landlord to make repairs.

Analysis

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

By his own admission the Tenant has not paid the rent for August, September or October of 2011. He has stayed in the rental unit past the effective date of the 10 day Notice to End Tenancy issued to him in September. He had no order or other authority under the Act to withhold rent. Section 26 of the Act states the Tenant may not withhold rent even if the Landlord is in breach of the tenancy agreement or the Act.

The correct action for the Tenant would have been to continue paying his rent and make an Application to compel the Landlord to make repairs to the rental unit and for an order to reduce his rent until those repairs were made. The Tenant did not do this until he had withheld rent for at least three months. The Tenant is not allowed to withhold rent without an order from a Dispute Resolution Officer or with some other authority under the Act. The Tenant here had no order or authority to withhold rent. He is not allowed to stop paying his rent in breach of the Act, then apply for an order to allow this three months later.

Therefore, I find the Tenant has breached sections 26 and 46 of the Act by not paying the rent to the Landlord.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$1,550.00** comprised of \$1,500.00 in unpaid rent for August, September and October of 2011, and the \$50.00 fee paid by the Landlord for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The Landlord has leave to apply for further monetary orders, if he so chooses.

This decision is final and binding on the parties, except as otherwise provided for 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: November 01, 2011.
