

DECISION

Dispute Codes CNR, MNSD, FF

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for unpaid rent, the return of the security deposit and recovery of the filing fee.

The Tenant's application for the return of the security deposit is pre-mature as the Tenancy continued to the date of this hearing. As such, the Tenant's application for the return is dismissed with leave to reapply when the Tenancy is ended.

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

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the 10 day notice to end tenancy for unpaid rent?

Background, Evidence and Analysis

In the Tenant's details of dispute, it states, "my heat is included, but since it started getting cold, I noticed that my heat wasn't working. I told my old landlord that I'm withholding my rent until my heat is fixed...". The Tenant confirmed in her direct testimony and that of her details of dispute that she withheld rent without permission from the Residential Tenancy Branch.

During the hearing, the Tenant stated that she was moving out soon, but wished to dispute the 10 day notice to end tenancy for unpaid rent. The Landlord stated that he was willing to mutually end the tenancy.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agree that the Tenant shall surrender possession of the rental unit to the Landlord on January 1, 2012 at or before 1:00 p.m and that the Landlord shall receive an order of possession to reflect this mutual agreement.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties.

I decline to issue the recovery of the filing fee as the Tenant has not been successful in her application.

Conclusion

Both parties mutually agreed to end the tenancy on January 1, 2012 at 1:00 p.m. and the Landlord shall receive an order of possession to reflect this.

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: December 29, 2011.

Residential Tenancy Branch