



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord applied for an order for possession based on unpaid rent and cause, and for recovery of the filing fee for the Application. At the start of the hearing, the Agent for the Landlord requested to amend the Application to include a monetary order for unpaid rent for January 2012, and to retain the security deposit in partial satisfaction of the claim. As described below, I have allowed amendments to the Application.

The Tenant filed his Application to request an order cancelling the Notice to End Tenancy.

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.

I note that although the Landlord requested an order based on a Notice to End Tenancy issued for cause, there was no copy of this Notice provided in evidence. Therefore, I dismiss this portion of the claim, with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to monetary relief and an order of possession?

Should the Notice to End Tenancy be cancelled?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on December 24, 2011.

The Agent for the Landlord testified that, as of the date of this hearing, the Tenant owes \$1,950.00 in rent.

The Tenant testified he agreed with the amount due and that he has not paid this rent. He testified he can pay all the rent due, plus the Landlord's filing fee for the Application, tomorrow by noon.

The Agent for the Landlord agreed they would not enforce an order of possession for unpaid rent if the Tenant paid this amount by noon tomorrow.

Analysis

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

The Tenant testified he agrees he owes the Landlord rent. Therefore, I dismiss his Application.

I find that the Landlord is entitled to an order of possession and a monetary order for unpaid rent.

The Agent for the Landlord consented that the Landlord would be willing to withhold enforcement of an order for possession on the condition that the Tenant pay to the Landlord **no later than 1:00 p.m. on January 18, 2012, the total amount of \$2,000.00** comprised of rent in the amount of \$1,950.00 and the \$50.00 filing fee in respect of this application.

If the \$2,000.00 is not paid by 1:00 pm on January 18, 2012, then the Landlord is entitled to enforce the order for possession. A formal order has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Tenant agrees he has also not paid rent for January 2012 and the Landlord will suffer a loss of rent for the month. Therefore, under section 64 of the Act, I allow the Landlord's claim to be amended to include one additional month of rent.

As the Landlords may suffer a loss and are still holding the security deposit, I allow them to amend the Application to include a claim against the security deposit as well, pursuant to section 64 and 72 of the Act.

Therefore, if payment is not received by the above described time and date, I find that the Landlord has established a claim for unpaid rent in the amount of \$1,950.00 and the \$50.00 fee paid by the Landlord for this application totalling **\$2,000.00**.

I order that the Landlord retain the deposit and interest of \$447.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,552.50**.

This order may be filed in the Small Claims Court and enforced as an order of that Court.

If the Tenant pays the rent due by the time and date described above, then the tenancy will continue until ended in accordance with the Act.

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: January 17, 2012.
