

DECISION

Dispute Codes:

Landlord DD's application filed December 29, 2011: MNR; OPR; FF

Tenant's application filed January 9, 2012: CNR; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord DD seeks an Order of Possession based on a Notice to End Tenancy that was served on December 2, 2011; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel a Notice to End Tenancy issued January 6, 2012; and to recover the cost of the filing fee from the Landlord OF.

The Landlords and the Tenant gave affirmed testimony at the Hearing.

Preliminary Matters

The Landlord DD seeks an Order of Possession with respect to a Notice to End Tenancy that was served upon the Tenant on December 2, 2011. The Landlord did not provide a copy of the Notice to End Tenancy in evidence. The Tenant denied owing the Landlord any money for unpaid rent.

Documentary evidence to support an applicant's position is important and must be given to the other party and to the Residential Tenancy Branch before the Hearing. Applicants are provided with instructions for evidence processing when they are given provided the Notice of Hearing documents from the Residential Tenancy Branch. Deadlines are included in those instructions and are critical. The Landlord did not provide any documentary evidence to support their application and therefore their application is dismissed in its entirety.

The Hearing continued with respect to the Tenant's application.

Issues to be Decided

- Should the Notice to End Tenancy issued January 6, 2012, be cancelled?

Background and Evidence

The Tenant provided a copy of the Notice to End Tenancy issued January 6, 2012, in evidence.

The parties agreed on the following facts:

The Tenant moved into the rental property in April or May of 2011. He occupied a different suite at the beginning of the tenancy and moved to the rental unit in August, 2011.

Rent is \$800.00 per month, due on the first day of each month. The Tenant also pays a monthly parking fee in the amount of \$10.00.

The Landlords gave the following testimony

The Landlords testified that the Notice to End Tenancy dated January 6, 2012 (the "Notice") was posted on the Tenant's door on January 6, 2012.

The Landlords testified that the Notice was for unpaid rent for August, 2011, unpaid rent for January, 2012, unpaid parking fees and NSF fees. The Landlords testified that the Tenant's cheque for rent due in August, 2011, was returned to the Landlord, NSF. The Landlords testified that the Tenant paid rent and parking fees for January, 2012, on January 10, 2012, in the total amount of \$810.00.

The Tenant gave the following testimony

The Tenant testified that he has had four different Landlords (building managers) since he moved into the building. He stated that he does not owe any rent at all to the Landlord, and that he has provided proof to one of the prior Landlords. He stated that all the current Landlord has to do is make a phone call in order to confirm that his rent is up to date.

Analysis

When a Tenant seeks to cancel a Notice to End Tenancy, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice to End Tenancy.

The Landlords did not provide any documentary evidence to support their claim that the Tenant had not paid rent for August, 2011 (for example, a copy of the tenant ledger; bank statements; a copy of the NSF cheque). The Tenant denied that he owed for August, 2011, and therefore I find the Landlord did not provide sufficient evidence to prove their claim that August, 2011, rent was not paid.

I accept the Landlords' testimony that the Notice was posted to the Tenant's door on January 6, 2012. Section 90 of the Act deems service in this manner to be effective 3 days after posting the document. Therefore, I find that the Tenant was served with the Notice on January 9, 2012.

The Landlord testified that the Tenant paid rent for January, 2012, on January 10, 2012, which is within the time frame allowed under Section 46(4)(a) of the Act (within 5 days of receipt of the Notice).

I find that the Landlords have not provided sufficient evidence that the tenancy should end for the reasons provided on the Notice to End Tenancy. The Tenant's application to cancel the Notice is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in his application and I find that he is entitled to recover the cost of filing the application from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlords.

Conclusion

The Landlord's application is **dismissed** in its entirety.

The Tenant's application to cancel the Notice to End Tenancy issued January 6, 2012, **is granted**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is entitled to recover the **\$50.00** filing fee from the Landlords. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlords.

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: January 17, 2012.

Residential Tenancy Branch