

DECISION

Dispute Codes CNR, FF

Introduction

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

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have made detailed reference to the evidence submitted by the other party, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

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

The Landlord states that the 10 day notice to end tenancy for unpaid rent was issued and served to the Tenant on January 2, 2012 by posting it on the rental unit door. The notice displays an effective date of January 13, 2012. The notice also displays unpaid rent of \$2,350.00 due January 1, 2012, which the Landlord's agent states is unpaid rent of \$1,175.00 for December 2011 and January 2012.

At the outset of the hearing, the Tenant stated that he did not pay rent for the months December 2011 and January of 2012. The Tenant cites a dispute with the Landlord for repairs.

Analysis

Section 26 of the Residential Tenancy Act states,

Rules about payment and non-payment of rent

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As such, I find that the Tenant through his own direct testimony has failed to pay rent when due. The Tenant did not have a right to withhold rent. As such I find that the Tenant has failed to establish a claim to set aside the notice. The Tenant's application to cancel the notice is dismissed.

Conclusion

The Tenant's application to set aside the notice is dismissed.

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 31, 2012.

Residential Tenancy Branch