



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a Ten Day Notice for Unpaid Rent or Utilities set aside. Both parties participated in the teleconference hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to have the Notice set aside?

Background and Evidence

The tenancy began on or about October 1, 2008. Rent in the amount of \$625.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$312.50. The tenant failed to pay rent in the month(s) of February and on February 3, 2012 the landlord served the tenant with a notice to end tenancy.

The tenant gave the following testimony; gave the landlord notice that he will be moving out on February 29, 2012, held back half the rent payable for the month of February as he feels the landlord is going to falsely withhold his security deposit and was just trying to avoid any "hassle".

The landlord has not made a cross application but did confirm that the amount still outstanding is \$312.50 and that if the unit was in a good clean and undamaged state the tenant would be entitled to their security deposit.

The landlord and tenant made inquiries about any unpaid rent in terms of a monetary order and it was explained that any and all outstanding issues in regards to this tenancy may be resolved through dispute resolution if either party wished to file. The purpose of this hearing was solely based on the application of the tenant and whether the Notice to end tenancy is to be set aside.

Analysis

The tenant is the sole applicant in this matter and bears the burden of proving his claim. I read the Section 1 of the Residential Tenancy Act to the tenant that strictly prohibits a tenant using his security or pet deposit as a means of payment for the rent. I asked the tenant if he was aware of this section and he replied "ya I did, but I just thought I could do things my way and a lot quicker". I further asked the tenant if he had knowingly and willingly withheld half the rent, he responded "ya I did". Based on the testimony of the tenant and his clear lack of compliance with the Act, he has not satisfied me that the 10 Day Notice to End Tenancy for Unpaid rent or Utilities should be set aside.

The tenant has been unsuccessful in his application.

Conclusion

The tenant's application is dismissed in its' entirety without leave to reapply.

The tenancy is terminated.

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: February 22, 2012.

Residential Tenancy Branch