



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OPR, OPC, OPB, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by each party.

The Tenant applied to cancel a one month Notice to End Tenancy for cause, and to request more time to file an Application to dispute the one month Notice.

The Landlord applied requesting to end the tenancy and obtain an order of possession, based on a one month Notice to End Tenancy for cause and on a 10 day Notice to End Tenancy for unpaid rent, and requested a monetary order and to recover the filing fee for the Application.

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 the Tenant left the hearing before its conclusion.

Issue(s) to be Decided

Has the Tenant disputed the 10 day Notice to End Tenancy for unpaid rent?

Should the one month Notice to End Tenancy for cause be cancelled?

Background and Evidence

This tenancy began on February 1, 2012, with the parties entering into a written tenancy agreement. The monthly rent was set at \$600.00 per month, payable on the first day of each month and the Tenant paid the Landlord a security deposit of \$300.00.

On February 18, 2012, the Landlord served the Tenant with a one month Notice to End Tenancy for cause.

On February 26, 2012, the Landlord served the Tenant with a 10 day Notice to End Tenancy for unpaid rent of \$225.00, by posting it to the door of the rental unit. This was observed by a third party, who provided a written statement attesting to witnessing the notice being posted to the door. The Landlord testified that at the time of the hearing the Tenant still owed \$125.00 for February rent.

The Tenant agreed he had not paid all the rent for the first month of the tenancy. He testified he moved in later in the month and did not feel he should have to pay rent for the whole month.

On February 28, 2012, the Tenant filed an Application to dispute the one month Notice to End Tenancy for cause. The Tenant had to amend this Application on March 1, 2012, to correct the address on the Application.

The Tenant did not apply to dispute the 10 day Notice to End Tenancy and did not amend the Application he had already filed in order to dispute the 10 day Notice.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenant has not paid all the rent due to the Landlord and did not apply to dispute the 10 day Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

As the tenancy is ending due to unpaid rent, it is not necessary to make a finding on the one month Notice to End Tenancy for cause, and I dismiss the Applications of both parties on the issue of cause.

I note that when I explained to the Tenant the tenancy was ending due to the 10 day Notice to End Tenancy for unpaid rent he began to change his testimony from earlier in the hearing. For example, he initially had testified he owed the rent although he did not feel he had to pay it because he moved in part way through the month. He then changed this testimony and stated he had paid all the rent for the month and had evidence of this. Following this, the Tenant then began to state he had not received the 10 day Notice for unpaid rent. Earlier in the hearing he had testified he had the 10 day Notice to End Tenancy, but he did not bring it with him for the hearing. Based on these inconsistencies, I find the Tenant's evidence lacked credibility.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$175.00**, comprised of \$125.00 in unpaid rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain \$175.00 from the deposit in full satisfaction of the claim and the Landlord must deal with the balance of the security deposit in accordance with the Act.

Conclusion

The Tenant failed to pay rent and did not file to dispute the 10 day Notice to End Tenancy for unpaid rent. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep \$175.00 from the security deposit and must deal with the balance of the deposit 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: March 19, 2012.

Residential Tenancy Branch