



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR

Introduction

This hearing was convened in response to an application by the landlord dated March 20, 2012 **and** an application by the tenant dated March 19, 2012.

The tenant sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End).

The landlord sought an Order of Possession due to unpaid rent, and a Monetary Order to recover rental arrears.

Both parties appeared in the conference call hearing and participated with submissions and testimony.

The tenant testified and submitted they received the Notice to End on March 12, 2012 and did not file for Dispute Resolution to cancel the Notice to End inside (within) five (5) days of receiving the Notice and applied for more time to make such an application. In addition, the tenant testified they did not serve the landlord with their Notice of Hearing disputing the Notice and the landlord claims they did not know of the tenant's application. As a result of all the foregoing, I preliminarily **dismiss** the tenant's application, without leave to reapply.

The tenant did not submit any document evidence to the landlord's application file. The tenant also claims they acted on the Notice to End and vacated the rental unit March 31, 2012. Therefore, the landlord's request for an Order of Possession is mute as it is not required.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The testimony of the landlord and the tenant is that the tenancy began March 1, 2012. There is no written tenancy agreement. The parties orally agreed the rent payable per month would be in the amount of \$850.00 payable in advance. The parties disagree on the particulars for utilities – whether included or separate. None the less, the tenant agreed they did not pay the rent for the month of March 2012 and the landlord served the tenant with a Notice to End Tenancy for non-payment of rent.

The landlord's monetary claim is for the rent arrears for March 2012 as well as for utilities.

Analysis

On reflection of the oral evidence by both parties in this matter and based on the agreed testimony of the landlord and the tenant I have reached a decision.

Section 26 of the Residential Tenancy Act states, in part, as follows,

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.

The tenant does not dispute that the rent was not paid and did not submit proof to the contrary, nor do they possess an Order from a court or an Arbitrator allowing them to keep the rent or that the tenant held back the rent, with prior notice to the landlord, for the cost of *emergency repairs*, or proof of any right that they may deduct all or a portion of the rent. I find that the tenant was served with a Notice to End tenancy for non-

payment of rent, and despite having applied for dispute resolution to dispute the Notice to End the tenant confirmed that the rent has not been paid and does not have evidence upon which to dispute the landlord's claim for the rent. In the absence of any agreement respecting utilities – written or oral - **I dismiss** any claim respecting same. However, based on the above facts and all of the foregoing I find that the landlord is entitled to rent for the month of March 2012. I find the landlord has established a claim for **\$850.00** in unpaid rent. The landlord's claim on application for loss of revenue for April 2012 **is dismissed** as the tenant vacated in compliance with a Notice to End issued by the landlord.

Conclusion

The tenant's application is **dismissed**.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 12, 2012

Residential Tenancy Branch