



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant's Application is seeking an order to allow the Tenant more time to Apply to cancel a 10 day Notice to End Tenancy for unpaid rent, and for an order to cancel the 10 day Notice to End Tenancy for unpaid rent.

The Landlord filed a claim for an order of possession based on unpaid rent, and requested monetary orders for unpaid rent, for alleged damages to the rental unit, for compensation under the Act or tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue(s) to be Decided

Should the Tenant be granted more time to file his Application to cancel the 10 day Notice to End Tenancy for unpaid rent?

Background and Evidence on Preliminary Issue

The two Agents for the Landlord testified that they personally served the Tenant with a 10 day Notice to End Tenancy on October 29, 2012.

The Tenant disputes this and testified he was personally served with the 10 day Notice to End Tenancy on October 30, 2012.

The Tenant filed his Application to dispute the Notice to End Tenancy on Tuesday November 6, 2012.

The Tenant testified he filed his Application to dispute the 10 day Notice to End Tenancy on November 6, 2012, because he believed did not have to count the days on the weekend when calculating the five day period.

Analysis of Preliminary Issue

Based on the affirmed testimony and evidence, I find the Tenant did not file his Application on time. Even if I accept the Tenant's evidence he was served on October 30, 2012, (which I do not), the Tenant still had to file his Application no later than Monday November 5, 2012, to be within the required five days to file to dispute a 10 day Notice to End Tenancy for unpaid rent.

Based on his testimony of why he filed late, I find that the Tenant filed late in this matter because he was simply attempting to delay proceedings to evict him for unpaid rent. I do not find the Tenant has proven exceptional circumstances prevented him from filing on time, as required under section 66 of the Act.

Therefore, I do not allow the Tenant's request for more time to file his Application, and I dismiss his Application without leave to reapply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on October 29, 2012.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice, however, his Application has been dismissed as described above.

The Agents for the Landlord testified that the monthly rent for the rental unit is \$550.00, which is due on the first day of the month, and the Tenant has not paid a security deposit.

The amount indicated on the Notice that was due on October 1, 2012, as \$2,025.00. The Agents testified that the Tenant failed to pay rent on November 1, 2012 as well, and that as of today, November 26, 2012, the Tenant owes \$2,575.00 in rent.

The Tenant argued that the October Notice showing \$2,025.00 due included rent for November of 2012. The Tenant argued that the Agents for the Landlord had agreed to abate the rent owed by \$1,000.00. The Tenant also argued that all the rent has actually been paid and he provided a form, ostensibly from the ministry providing him assistance, which indicates the rent is paid directly to the Landlord.

In reply, the Agents for the Landlord denied they reduced the rent owed by \$1,000.00. They agreed they had talked about this with the Tenant, however, no agreement had been reached to abate the rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenant has failed to pay all rent when due and that the 10 day Notice to End Tenancy is valid. 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 Tenant has not paid all the rent due to the Landlord in the amount of \$2,575.00, owed as of November 1, 2012. I do not accept the Tenant's evidence on the amount of rent that is due, as I find the Tenant's credibility to be lacking due to the inconsistencies in his testimony and evidence. For example, I do not accept the form supposedly provided by the ministry, as it appears the Tenant filled out the entire form himself. In this type of scenario and based on past experience, I would expect a signed letter from the officer assisting the Tenant to explain the records show all rent has been paid directly to the Landlord.

Therefore, I find that the Landlord has established a total monetary claim of **\$2,625.00**, comprised of \$2,575.00 in rent due up to and including November 1, 2012, and the \$50.00 fee paid by the Landlord for this application.

I grant the Landlord an order under section 67 for the balance due of \$2,625.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, I note that the Landlord has applied for monetary compensation for alleged damages to the rental unit. It was explained to the Landlord and Tenant at the hearing that this claim is premature, as the Tenant has a right under the Act to make repairs he is responsible for up to the end of the tenancy. Therefore, these claims of the Landlord are dismissed with leave to reapply.

This decision is final and binding on the parties, unless 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 Act.

Dated: November 26, 2012.

Residential Tenancy Branch