



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was scheduled to hear a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the tenant confirmed that he and the other applicant have since vacated the residential property and retrieved all of their possessions. The tenant confirmed that he does not wish to continue with the tenancy. As the tenants have vacated the request to cancel the Notice is a moot issue.

The tenant requested that I make a finding that he does not owe the landlord any rent or utilities. I confirmed that the landlord has not filed against the tenants for any unpaid rent or utilities.

The tenant submitted that the landlord illegally and forcibly removed him from the property at the end of October 2012. I noted the tenant filed to cancel the 10 Day Notice on November 1, 2012. I informed the tenant that such an allegation of illegal eviction was not part of this Application and the tenant would have to make another Application for Dispute Resolution to deal with that issue.

The tenant stated that the landlord still has the tenant's security deposit but acknowledged he has not yet provided the landlord with a forwarding address in writing. The tenant was informed of his obligation to provide a forwarding address to the landlord in writing in order for the landlord to either refund the security deposit or file against the deposit.

Both parties were encouraged to contact an Information Officer with the Branch and determine their respective rights and obligations under the Act and filing Applications for Dispute Resolution for the other issues the parties tried to raise during this hearing.

The tenant requested that I award him recovery of the filing fee and I proceed to consider that request.

Issue(s) to be Decided

Are the tenants awarded recovery of the filing fee?

Background and Evidence

The parties agreed there was no written tenancy agreement; the monthly rent was \$1,200.00 per month and a \$600.00 security deposit was collected. However, the parties disagreed on almost everything else.

The tenant stated that there were two tenants under the tenancy agreement but that the other tenant was in jail and cannot be located in order to obtain evidence from her. The landlord submitted that there was only one tenant: the person appearing at the hearing.

The tenant was of the position utilities were included in rent. The landlord was the position utilities were not included in rent.

The tenant was of the position that all the rent was paid to the landlord for the months of September 2012 and October 2012 including cash payments for which no receipts were given. The landlord was of the position that only two partial rent payments were received: \$600.00 and \$470.00.

The tenant submitted that only one page of a 10 Day Notice was posted on his door. The landlord submitted that both pages of a 10 Day Notice were personally served upon the tenant on October 30, 2012.

Other than the first page of a 10 Day Notice dated October 30, 2012 I was not provided any other documentary evidence.

Analysis

Under the Act, I am tasked with resolving the dispute identified on the Application. A respondent has the right to be put on notice as to the dispute that shall be the subject of the hearing in order to prepare and provide a defence.

The Applicant contained a request that the 10 Day Notice be cancelled so that the tenancy shall continue. However, the request is a moot issue as the tenants have since vacated the rental unit and do not wish to continue their tenancy.

The tenant attempted to use the hearing as an opportunity to deal with issues or disputes not relevant or identified on the Application and the parties were encouraged to contact an Information Officer in order to determine their respective rights and obligations under the Act.

I make no finding as to whether the tenants were forcibly removed from the property by the landlord as this was not an issue raised on the Application and the Application was not amended before the hearing to deal with such an issue. Therefore, I have only considered that the tenants filed to request cancellation of a 10 Day Notice and then the tenants vacated the property in deciding to make no award for recovery of the filing fee.

Conclusion

The tenants have vacated the rental unit and the request to cancel the 10 Day Notice is a moot issue. The tenants' Application 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: December 05, 2012.

Residential Tenancy Branch