



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on December 14, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on December 20, 2012 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to a cancellation of the Notice to end Tenancy?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 1, 2012 with rent of \$850.00 payable on the first day of each month. At the outset of the tenancy, the Landlord collected \$425.00 as a security deposit.

Pursuant to a previous Decision dated December 10, 2012, the Tenants were ordered to pay outstanding rent for November and December 2012 as soon as possible and that if this does not occur, the Landlord may issue a 10 day Notice to End Tenancy. The Tenant states that they received this Decision on December 13, 2012. The Landlord states that they received the Decision on either December 12 or 13, 2013. It is noted that the mailing addresses for both Parties are at the same residence, the Tenant living in the basement unit. The Landlord served the Tenants personally with a 10 day Notice to End Tenancy for unpaid Rent on December 13, 2012.

The Tenant states that funds had to be obtained from welfare and that the earliest these funds could be provided to the Landlord was December 19, 2012. There is no dispute that the Landlord received the outstanding rent of \$1,275.00 for November and December 2012 on December 19, 2012. The Landlord states that a usual receipt was issued for these funds and that the Tenants also paid January 2013 rent.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due. Section 62 of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under the Act. It is clear that the previous decision ordered the Tenant to pay December 2012 rent as soon as possible. I take this order to give effect to the Tenants' obligation to pay the rent for December 2012 after December 10, 2012 and as soon as possible from that date. Given this decision, I find that the Landlord acted sooner than reasonably contemplated by the previous order by serving the Notice either prior to receiving the decision or on the same day as receiving the decision. I also find, given the Tenant's evidence in relation to the arrangements that needed to be made, and noting that the rent was paid within 6 days of receiving the Notice, that the Tenant did pay the outstanding rent as soon as possible, thereby meeting the previous order's requirements. As a result, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The Landlord's application is therefore dismissed.

Conclusion

The Notice is cancelled and the tenancy continues.

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: January 17, 2013

Residential Tenancy Branch

