



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR

For the tenant – CNR MT RR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The tenant has applied for more time to file an application to cancel a Notice to End Tenancy; to cancel the 10 Day Notice to End Tenancy; and for an Order to reduce rent for repairs, services and facilities agreed upon but not provided.

The tenant failed to serve the landlord with his application and Notice of hearing consequently the tenant's application has not been heard today and is dismissed without leave to reapply.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agree that this month to month tenancy started in September, 2010. Rent for this unit is \$850.00 and is due on the 1st of each month.

The landlord testifies that the tenant failed to pay rent for December, 2012 of \$850.00 and failed to pay rent for January, 2013 of \$850.00. The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on January 02, 2013 by posting it to the tenant's door. This Notice informed the tenant that rent of \$1,700.00 was due on January 01, 2013. The Notice also informed the tenant that he had five days to pay the outstanding rent, dispute the notice, or move from the rental unit on January 12, 2013.

The landlord testifies that the tenant did not pay the outstanding rent and the landlord seeks an Order of Possession effective as soon as possible and a Monetary Order to recover the unpaid rent.

The tenant testifies that he had a verbal agreement with the previous landlord to upgrade his rental unit. The tenant testifies that the previous landlord would reimburse the tenant through rent rebates for the materials used to do this work in the unit and the tenant contributed his labour. The tenant testifies that he used skilled workmen to do some of the work. The new landlords took over the building in September, 2012 but before this the previous landlord had verbally agreed the tenant could renovate the washroom in the tenants unit in lieu of rent. The tenant testifies that he had already ripped out the old washroom when the new landlords took over. The tenant testifies he e-mailed the new landlords to inform them of his agreement with the previous landlord and that the tenant was renovating the washroom.

The tenant testifies that the new landlords told the tenant to stop all work as they had people who would do this renovation. However the landlords did not complete the work and the tenant was without a washroom until the tenant decided to finish the washroom himself. The tenant testifies that the tub has been put in and the plumbing is in place.

The tenant testifies that he had withheld the rent as he wanted the new landlords to finish the renovation.

The landlord testifies that they are not aware of any agreement between the tenant and the previous landlord for the tenant to do any renovations to the rental unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

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 has provided no evidence in evidence to corroborate an agreement he had with the previous landlord to renovate the bathroom neither has the tenant asked the previous landlord to attend the hearing as the tenants witness. When an agreement is made orally then by its very nature it is impossible for a third party to determine that an agreement had been made. The tenant's recourse would have been to file an application against the new landlords for repairs to be carried out in the washroom or to uphold the tenant's right to facilities required by law. As the tenant did not do this but rather withheld his rent I find the landlords are entitled to recover the rent for December, 2012 and January 2013 from the tenant. A Monetary Order has therefore been issued to the landlord for the amount of **\$1,700.00**.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days and although the tenant did file an application to set the Notice aside this was not filed within the five allowable days

and was not served upon the landlord. The notice is deemed to have been received by the tenant on January 05, 2013 and the effective date of the notice is amended to January 15, 2013 pursuant to section 53 of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession.

Conclusion

I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 of the *Act* in the amount of **1,700.00** for rent owed. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: February 07, 2013

Residential Tenancy Branch

