



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid rent issued on April 29, 2013.

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application from the tenant.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for unpaid rent be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Based on the testimony of the tenant, I find that the tenant was served with a notice to end tenancy for non-payment of rent. 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 testified that he has not paid any rent for April and May 2013, because the landlord called the police and attempted to have him evicted on April 6, 2013. The tenant alleged the landlord has breached the Act.

The landlord seeks an order of possession. The landlord seeks and monetary order for rent owed in the amount of \$1,000.00.

Analysis

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

Under section 26 of the Act, the tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant applied to cancel the ten day notice to end tenancy dated issued on May 3, 2013. However, I find that there is no merit to the tenant's application. In particular, the tenant admitted that rent was owed when he received the notice and that amount was not paid within the five days required by the Act. Further, the tenant claims he withheld rent as a result of the landlord breaching the Act, however, the tenant did not have the authority under the Act to withhold any portion of rent. Therefore, I dismiss the tenant's application to cancel the notice to end tenancy.

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 landlord has established a total monetary claim of **\$1,050.00** comprised of unpaid rent for April and May 2013 and the \$50.00 fee paid by the landlord for this application. I grant the landlord an order under section 67 for the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy was dismissed.

The landlord is granted an order of possession. The landlord is granted a monetary order for unpaid rent

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: May 30, 2013

Residential Tenancy Branch

