



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing dealt with the Application of the Tenant, requesting an order to cancel a 10 day Notice to End Tenancy for unpaid rent, for monetary compensation 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 Matters

Neither party submitted any documentary evidence, such as a copy of the 10 day Notice to End Tenancy.

At the outset of the hearing the Landlord requested an adjournment of this hearing and requested that the Tenant's Application be heard at the same time as the Landlord's Application for rent due, which is to be heard at a later date.

The Tenant did not agree to adjourn the hearing and stated he wanted to proceed. Therefore, as this was the Tenant's Application, I found the hearing should proceed.

Following this, the Landlord requested an order of possession if the Tenant was not successful in the Application.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy be cancelled?

Is the Tenant entitled to monetary compensation?

Background and Evidence

The Landlord testified he issued the Tenant a 10 day Notice to End Tenancy for unpaid rent on or about July 1, 2013. The Landlord testified the Tenant had not been paying all of the rent due since about February of 2013.

The Tenant testified he has been withholding rent. He testified that the Landlord and he had an agreement he could work in exchange for rent and the Landlord has not credited him correctly for this work. The Tenant testified that this agreement was not in writing. He testified he had witnesses who have seen the work at the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant's Application to cancel the 10 day Notice to End Tenancy must be dismissed.

Under section 26 of the Act, a Tenant may not withhold rent. Section 26(1) 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.

Based on the evidence before me, I find the Tenant has withheld rent without a right under the Act to deduct any rent.

As I explained this portion of the Act to the Tenant, the Tenant became agitated, antagonistic and inappropriately loud. The Tenant was upset with the Landlord, the law and the Arbitrator.

The Tenant stated he had phone numbers for witnesses who would testify to the condition of the rental unit and the work he had done.

When I attempted to explain the law to the Tenant, his agitation escalated. He stated he wanted to attend Supreme Court to have this matter heard. The Tenant was also upset that his witnesses would not be heard. Although I tried to explain the law to the Tenant, he continuously interrupted me or simply talked over me.

The Tenant further explained he faces personal challenges and that the Landlord should not be allowed to rent out this unit. The Tenant then hung up before the hearing concluded.

As the Tenant did not address his monetary claims in the hearing because he left early, I dismiss the monetary portion of the claim with leave to reapply.

The Tenant may apply for monetary compensation again; however, the Tenant may want to have an advocate assist him in any further Applications and hearings.

As I have dismissed the Tenant's Application and the Landlord orally requested an order of possession during the hearing, I must grant the Landlord's request pursuant to section 55 of the Act. Section 55(1) states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on section 55 of the Act, I grant the Landlord's request for an order of possession, effective two days after service on the Tenant.

Conclusion

The Tenant's Application to cancel the Notice to End Tenancy was dismissed, as he has been withholding rent. The Landlord is granted an order of possession under section 55 of the Act.

The Tenant's request for monetary compensation is dismissed with leave to reapply. The Tenant should consider having an advocate assist him in any further Applications or hearings.

As the Tenant was unsuccessful in this matter, I do not award the filing fee for the Application.

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: August 08, 2013

Residential Tenancy Branch

