



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

In the first application by time, second by file number, the tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent served November 25, 2013. In the second application the landlord seeks an order of possession pursuant to the Notice and a monetary award for four months' rent arrears, amended prior to hearing to claim six months loss of rent.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that either party is entitled to any of the relief requested?

Background and Evidence

The rental unit is a small house on a half-acre lot. The tenancy started in September 2005. The monthly rent is presently \$840.00 and the landlord holds a \$350.00 security deposit. The parties agreed the rent was due on the first of each month, but the landlord then referred to a written tenancy agreement from 2005 indicating rent was due on the 15th. A copy of that agreement was not filed as evidence nor was a copy supplied to the tenant in the landlord's evidence package. I find that since 2005 the parties had reached a tacit agreement that rent would be payable on the first of each month.

There is no dispute but that on the date the Notice to End Tenancy was served on the tenant he had not paid rent for August, September, October or November 2013. The tenant says he stands ready to pay four months of arrears. The landlord confirms the tenant phoned her on December 2nd to try to negotiate payment but she declined.

Analysis

In his application the tenant alluded to an offsetting claim for work done but that claim was not advanced at hearing.

The rules surrounding payment of rent and eviction for non-payment are strict. Section 26 of the *Residential Tenancy Act* (the “*Act*”) requires that a tenant pay rent even when due even if the landlord is in breach of her obligations. A tenant must pay rent even when he feels he is entitled to a rent offset for work done.

Section 46 of the *Act* says that if a tenant fails to pay rent the landlord may serve a ten day Notice and if the tenant fails to dispute or pay within 5 days the tenancy ends ten days later. In this case the tenant’s attempt to pay happened outside the five day window. The landlord was not obliged to accept the money as rent. Neither has the tenant shown that the Notice should otherwise be cancelled.

As a result, I find that this tenancy ended on December 6, 2013 and the landlord is entitled to an order of possession. Given the amount of arrears I grant the landlord an immediate order.

The landlord is entitled to a monetary award of \$5040.00 for rent in arrears to December and for loss of rental income for January 2014, plus the \$100.00 in filing fees paid. I authorize the landlord to retain the \$350.00 security deposit and \$12.40 interest. There will be a monetary order against the tenant for the remainder of \$4777.60.

Conclusion

The tenant’s application is dismissed. The landlord’s application, as amended, is allowed.

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, 2014

Residential Tenancy Branch

