



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, RR, OPC, 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 January 23, 2014, with an amendment dated February 25, 2014 for:

1. An Order cancelling a Notice to End Tenancy – Section 47;
2. An Order for repairs to the unit – Section 32; and
3. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65.

The Landlord applied on February 25, 2014, with an amendment dated February 26, 2014 for:

1. An Order of Possession - Section 55; and
2. 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 under oath.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to repairs?

Is the Tenant entitled to a rent reduction?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed and relevant facts: The tenancy started on October 1, 2013. Rent of \$750.00 is payable monthly and at the outset of the tenancy the Landlord collected \$375.00 as a security deposit. The Tenant was personally served with a one month notice to end tenancy for cause (the "Notice") on February 14, 2013. The effective date of the Notice is March 31, 2014. The Tenant amended its application on February 25, 2014 to add the dispute of the Notice. The Tenant did not apply for additional time to dispute the Notice.

The Tenant states that while he was informed about being past the time limit when he amended the application, he misunderstood the dates as he has brain damage. The Tenant states that he was in the hospital on February 24, 2014 so could not make the application on time. The Tenant states that he was only in the hospital on this one day. The Tenant states that the repairs being sought were in relation to soundproofing the unit.

Analysis

Section 47 of the Act provides that where a tenant does not dispute a notice to end tenancy for cause within 10 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Although the Tenant provides evidence in relation to the late amendment to include a dispute of the Notice, this cannot be considered as the Tenant did not apply for extra time. As the Tenant did not make his application to dispute the notice within the time required under the Act, I find that the Tenant is not entitled to a cancellation of the notice and must vacate the rental unit on or before March 31, 2014. As the tenancy is ended on this date and no further rent is payable after this date, I dismiss the Tenant's claim for a rent reduction and repairs to the unit. I find that the Landlord is entitled to an order of possession effective 1:00 p.m. March 31, 2014.

Section 55 of the Act provides that where a tenant's application to dispute a landlord's notice to end tenancy is dismissed and, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession, an order of possession must be granted. Given this provision in the Act, the Landlord did not need to make its application as the Tenant was disputing the Notice. As such I decline to award recovery of the filing fee to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective **1:00 p.m. March 31, 2014**.

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: March 13, 2014

Residential Tenancy Branch

