



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fan Tower South Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for an order of possession pursuant to a ten day Notice dated October 2, 2014 and for a monetary award for unpaid October and November rent.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in December 2011. The monthly rent is currently \$750.00. The landlord holds a \$375.00 security deposit.

Mr. W. for the landlord testified that the landlord is owed the \$750.00 October rent and has suffered a \$750.00 loss of November rental income.

It is not disputed that the tenant has not applied to dispute the ten day Notice nor did he pay the \$1500.00 demanded in it within the time allotted. The tenant's agent Mr. F. argues that the tenant has suffered from the landlord's failure to repair the premises and particularly a lack of heat in the bedroom. He argues that the tenant paid \$750.00 on October 14th and that later in October, he, Mr. F., presented the landlord with the tenant's rent cheque but it was refused.

Analysis

The tenant failed to apply to dispute the Notice and did not pay the amount demanded in it within the time allotted. As a result, by operation of s. 46 of the *Residential*

Tenancy Act (the “*Act*”), this tenancy ended on October 13, 2014 and the landlord is entitled to an order of possession.

By virtue of s. 26 of the *Act*, a tenant is not entitled to withhold rent even if the landlord has failed to comply with its obligations under the law or the tenancy agreement, for example, failing to repair or provide heat. The tenant is free to apply to seek compensation for problems in the suited, but until he does and until a monetary award is made in his favour, he is obliged to pay rent as it becomes due.

I find the parties did not “reinstate” the tenancy by a later payment of rent. The cheque was declined by the landlord and even if it had been accepted it is not, of itself, conclusive proof of a mutual intention to continue the tenancy.

I grant the landlord an order of possession as this tenancy has ended.

I grant the landlord a monetary award of \$750.00 for outstanding October rent and \$750.00 for loss of November rental income, plus the \$50.00 filing fee for this application. I authorize the landlord to retain the \$375.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$1175.00.

Conclusion

The application 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: November 25, 2014

Residential Tenancy Branch

