



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR

Introduction

This hearing convened as a result of cross applications by the Landlord and Tenant. In the Landlord's Application for Dispute Resolution filed October 8, 2014, he sought an Order of Possession based on unpaid rent and to recover the filing fee. In the Tenant's Application for Dispute Resolution filed October 6, 2014, he sought to cancel the Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

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 oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 1 Month Notice?
2. Should the Landlord recover the filing fee?
3. Should the 10 Day Notice be cancelled?

Background and Evidence

Neither party introduced a copy of the residential tenancy agreement and the Landlord claimed no such agreement existed. The Landlord testified that the tenancy began at

the end of November 2009 when the Landlord purchased the rental property from the Tenant. The Landlord claimed that rent was originally \$700.00 a month but that it had increased to the present amount of \$750.00 per month. No evidence was submitted by the Landlord to confirm the original rent, or how and when it increased \$50.00; however, the Landlord claimed the rent went up \$20.00 in October of 2012 and \$30.00 in December of 2013.

The Tenant claimed rent was \$700.00 per month. The Tenant claimed that he has been in the rental unit for over four years and has paid this amount without any problems. He says he paid cash, although no receipts were provided by the Landlord. After receiving the 10 Day Notice, he attempted to pay rent by certified cheque which he says the Landlord refused to accept and in fact returned.

Introduced in evidence was a copy of a letter from the Landlord, which the Tenant says was provided in 2012 when he was applying for a loan, and which indicates the amount of \$700.00 was paid for rent on August 15, 2012 and September 15, 2012.

The Tenant further testified that in September of 2014, the laundry facilities were no longer provided and that the Landlord agreed to reduce the rent to \$650.00. Also introduced in evidence was a copy of the certified cheque for \$650.00 dated October 15, 2014.

The Landlord testified that a 1 Month Notice to End Tenancy was issued on August 2, 2014 (the "1 Month Notice"). Notably, that document was not introduced in evidence. Further, the Landlord's Application notes that he is seeking an Order of Possession based on unpaid rent.

The Landlord also testified that a 10 Day Notice to End Tenancy was issued on September 26, 2014 (the "10 Day Notice"). Again, that document was not introduced in evidence.

The Tenant denied any knowledge of the 1 Month Notice. He testified that the 10 Day Notice was taped to his door on October 1, 2014. The Tenant filed for dispute resolution on October 1, 2014 and noted on his application that he was seeking to cancel a Notice to End Tenancy for Unpaid Rent.

Analysis

The parties did not provide copies of the 1 Month Notice, or the 10 Day Notice. As such, I am not able to find that either notice is valid as I am not able to consider the factors in section 52 of the Act.

The Landlord's request for an Order of Possession is dismissed.

Additionally, the parties do not agree as to the amount of rent payable and as such I am unable to determine if rent remains outstanding. The Tenant's request to cancel the 10 Day Notice is granted and the tenancy will continue until ended in accordance with the Act. The Landlord is cautioned that he cannot refuse rent from the Tenant.

As the Tenant has been successful, he is to be credited \$50.00 for the amount paid to file his application; the Landlord shall reduce his next month's rent by \$50.00.

Conclusion

The Landlord failed to provide any evidence in support either notice; as such the Landlord's request for an Order of Possession is dismissed.

The Landlord failed to provide any evidence to support the 10 Day Notice and the parties did not agree as to the amount of rent payable. As the parties did not submit either notice in evidence, I am not able to consider their validity.

The Tenant's application to dismiss the 10 Day Notice is granted and he is to be credited \$50.00 for the filing fee.

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: December 09, 2014

Residential Tenancy Branch

