



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, CNC

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and for cause. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled the landlord dialed into the conference call. The line remained open for 10 minutes; however, no one for the tenant dialed into the call. Based on the above I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by posting them to the tenant's door on December 18, 2014. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

TR testified that the respondent moved into the unit and had his own room on October 01, 2014. TR testified that he is the principal tenant named on the tenancy agreement and the respondent is not named on the tenancy agreement. TR testified that the respondent was an occupant who helped TR to pay the rent each month. They had agreed that the respondent would pay \$450.00 on the 1st of each month. The respondent did not pay a security deposit.

TR testified that he believes the respondent has vacated the unit as he has removed most of his belongings from his room. The respondent did not pay \$450.00 to TR towards Decembers rent and also owes \$68.78 for his share of the utilities. TR testified that the respondent was served with a 10 Day Notice to End Tenancy for unpaid rent and utilities on December 03, 2014 in person.

TR testified that he seeks an Order of Possession so he can change the locks to the rental unit.

Analysis

The respondent did not appear at the hearing to dispute the claims made by TR, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the respondent, I have carefully considered the documentary evidence and sworn testimony before me.

Section 26 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.*

However, I am not satisfied that a tenancy exists between the parties as the applicant is the only person named on the tenancy agreement between the applicant and his landlord, no further tenancy agreement verbal or written has been entered into between these parties and the applicant has stated that the respondent was an occupant of the applicants and helped the applicant pay his rent.

I refer the parties to the Residential Tenancy Policy Guidelines # 13 which deals with the matter of occupants over co-tenants. This guideline states that where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

As I have no evidence to show that the respondent entered into a tenancy agreement either verbal or in writing with this applicant then I must find that the respondent is an occupant and not a tenant and therefore has no rights or obligations under the *Act*. I find the applicant has not established that a tenancy is in place and therefore their claim for an Order of Possession or a Monetary Order is dismissed.

Conclusion

Both parties' claims are dismissed without leave to reapply.

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 07, 2015

Residential Tenancy Branch

