



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, OPC, MNR, MNSD, 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”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy for cause - Section 46;
2. An Order cancelling a notice to end tenancy for unpaid rent - Section 47;
and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenancy ended?

Background and Evidence

The following are undisputed facts: The tenancy started on December 1, 2014. Rent of \$1,000.00 is payable monthly on the first day of each month. At the outset of the

tenancy the Landlord collected \$500.00 as a security deposit. On November 2, 2014 the Tenant was given two 10 day notices to end tenancy for unpaid rent totalling \$2,000.00 for unpaid October and November 2015 rent (the "Notice"). Prior to this Notice the Landlord had served the Tenant with a one month notice to end tenancy for cause. The Tenant did not pay rent for October, November and December 2015. The Tenant did not pay rent because she was waiting for the hearing to determine the notice to end tenancy for cause. The Landlord claims unpaid rent and an order of possession effective December 31, 2015.

Analysis

Section 26 of the Act provides that 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. Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the undisputed evidence that the Tenant did not pay the rent as required under the tenancy agreement and considering that no order exists that allows the Tenant to withhold rent, I find that the Notice is valid and that the Landlord is therefore entitled to an order of possession effective December 31, 2015. As the tenancy has ended it is not necessary to consider the merits of the notice to end tenancy for cause. As the Tenant's application has had no merit I dismiss the application.

Based on the undisputed evidence of unpaid rent I find that the Landlord is entitled to \$3,000.00. As the Landlord's application has had merit I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$3,050.00**. Deducting the security deposit of \$500.00 plus zero interest from the entitlement leaves **\$2,550.00** owed by the Tenant to the Landlord.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on December 31, 2015.

I order that the Landlord retain the **deposit** and interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,550.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 16, 2015

Residential Tenancy Branch

