



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNC, ERP, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause;
2. To have the landlord make emergency repairs; and
3. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Should the landlord be ordered to make emergency repairs?

Background and Evidence

The tenancy began on November 1, 2014. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant.

The tenant was served with a 1 Month Notice to End Tenancy for Cause, issued on September 28, 2015. On November 5, 2015, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 5, 2015.

As there are two different reasons before me to end the tenancy I will therefore, first consider if the tenancy should end based on unpaid rent. Should there be sufficient evidence to support the ending of the tenancy, I find it not necessary to hear evidence on the 1 Month Notice to End Tenancy for Cause.

The tenant acknowledged that they received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant stated that they have not paid any rent for November 2015.

The landlord seeks an order of possession and a monetary order for unpaid rent.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and there is no evidence the tenant apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Further, even if the tenant amended their application to include the 10 Day Notice to End Tenancy for Unpaid Rent, which they did not. I find there would be no merit to the application as they admitted rent was not paid and a tenant does not have the authority to withhold rent simply because they feel entitled to do so.

I find the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 5, 2015, and is a valid notice. I find the tenancy legally ended on the corrected effective date of November 15, 2015, the tenant is now overholding the premises.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$850.00** comprised of unpaid rent for November 2015, and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of \$450.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the tenancy has ended based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 5, 2015, I find it not necessary to consider the merits of the 1 Month Notice to End Tenancy for Cause or the request to make emergency repairs as the tenancy has ended. The tenant's application is dismissed.

Conclusion

The tenant failed to pay rent. The landlord is granted a monetary order and an order of possession.

The tenant's application is dismissed.

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 03, 2015

Residential Tenancy Branch

