



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, CNR, MNR, MNSD, OLC, ERP, RP, PSF, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit.

The tenant applied for an order to cancel the notice to end tenancy. The tenant also applied for an order directing the landlord to comply with the *Act*, carry out emergency repairs and provide services.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing, the landlord requested me to dismiss the portion of his application that deals with the security deposit and allow him to make application for his claims if any, against the security deposit after the tenancy ends. Since the tenancy has not yet ended I allowed the landlord's request and have dismissed this portion of his application with leave to reapply.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The tenancy started on August 01, 2015 for a fixed term of six months. The rent is \$1,050.00 per month due on the first day of each month. The tenant is also required to pay 50% of the utilities. The tenant paid a security deposit of \$525.00.

The tenant agreed that he had not paid rent for November 2015 and on November 07, 2015; the landlord served the tenant with a notice to end tenancy for \$1,050.00 in unpaid rent and \$211.02 for utilities.

The tenant paid \$400.00 on November 07, 2015 and stated that the landlord verbally agreed to allow the tenant to pay the balance of rent for November on November 21, 2015. The tenant failed to pay the remainder of rent for November as per the verbal agreement and on November 25, 2015, the tenant made application to dispute the notice to end tenancy.

The tenant agreed that he had not paid any rent after the \$400.00 he paid on November 07, 2015. The tenant continues to occupy the rental unit and at the time of the hearing the tenant owed \$650.00 for November, \$1,050.00 for December and \$1,050.00 for January 2016 for a total of \$2,750.00 in unpaid rent.

The tenant stated that the reason rent was not paid was because the conditions in the rental unit were unsafe and unlivable due to leaks, rodents, holes in walls and defective wiring.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on November 07, 2015 and did not dispute the notice or pay full rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$2,750.00 for unpaid rent and \$50.00 for the filing fee for a total of \$2,800.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is ending, the tenant's application for an order directing the landlord to comply with the *Act*, carry out emergency repairs and provide services is moot and accordingly dismissed.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$2,800.00**

The tenant's application is dismissed in its entirety.

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 06, 2016

Residential Tenancy Branch

