



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR

Introduction

This hearing convened as a result of cross applications. The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 25, 2016 (the “Notice”) and the Tenant sought an Order cancelling the Notice.

Both parties appeared at the hearing. The Landlord was represented by his son J.P. who appeared as his agent. The Tenant appeared on his own behalf. I explained the hearing process to the participants they 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 make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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. Has the Tenant breached the *Residential Tenancy Act* or tenancy agreement entitling the Landlord to an Order of Possession?
2. Should the Notice be cancelled?

Background and Evidence

J.P. testified that the tenancy began June 2007. He stated that monthly rent as of the time the Notice was issued was \$950.00 per month. J.P. testified that the parties agreed that rent would be paid in two equal installments of \$475.00 payable on the 6th and the 21st of the month.

Introduced in evidence was an unsigned residential tenancy agreement which set the rental payments at \$1,000.00 per month. J.P. testified that this document was prepared as the Tenant was attempting to apply for a rental subsidy.

The Landlord provided in evidence a document which set out the payments for the time period November 1, 2015 to March 1, 2016 and which indicated that the Tenant was up to date on his rental payment until November 2015. J.P. testified that on November 6, 2015 the Tenant paid \$475.00 but failed to make the November 21, 2015 payment leaving an outstanding balance of \$475.00. This document also indicated that the Tenant failed to pay rent for January, February, or March 2016. J.P. testified that the Tenant also failed to pay rent for April 2016.

The Landlord issued the Notice on February 25, 2016. J.P. testified that the Notice was posted to the rental unit door on February 26, 2016. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of February 29, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, March 5, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

J.P. testified that the Tenant failed to pay the outstanding rent.

The Tenant applied for Dispute Resolution on February 29, 2016.

The Tenant testified that there was no set rent payable as there was no tenancy agreement and as such no agreement to pay. He testified that when the tenancy began in June of 2007, his monthly rent payments were \$750.00. He further testified that the rent payable as of November 2015 was \$900.00 not \$950.00 as claimed by the Landlord.

The Tenant stated that he paid his rent for November 2015, but owed for December 2015. And although he confirmed that his rent was \$900.00 at the time the Notice was issued, he also testified that he did not pay rent for January 2016, February 2016 or March 2016.

The Tenant stated that he disputed the Notice as the amount noted as outstanding was incorrect. He also stated that it was his hope that a tenancy agreement would be reached and he would be able to continue the tenancy. Despite this, he confirmed that he did not have the funds to pay the outstanding rent.

The Landlord testified that the rent was \$750.00 at the start of the tenancy in June 2007. He testified that the rent was raised annually. He confirmed that the Landlord did not issue a Notice of Rent Increase, and that the increase in rent was “verbally agreed to”.

Analysis

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

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

Although the parties disagree as to the amount of the current rent, and whether the November 2015 rental payments were made, there was no dispute that the Tenant failed to pay any rent for January 2016, February 2016, March 2016 and April 2016.

Accordingly, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This oOrder may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay the outstanding rent and did not have any legal authority to withhold rent. The Landlord is granted an Order of Possession. The Tenant's Application to cancel the Notice is dismissed.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 18, 2016

Residential Tenancy Branch