



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenant for an order cancelling the landlord's 10 Day Notice to End Tenancy dated October 7, 2016. The landlord made an oral request for an order of possession at the hearing. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on July 1, 2014. The rent is \$775 per month. The tenant failed to pay the rent on October 1, 2016 so the landlord served him with a 10 day Notice to End Tenancy for Unpaid Rent. The tenant disputed the Notice on October 11, 2016. The tenant did not pay any rent for October and has subsequently paid no rent for November and December.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In the present case, the tenant disputed the Notice but failed to pay the rent arrears indicated on the Notice. The tenant testified that he did not pay the rent because he has been sick and because the landlord had allowed an infestation of mice to "destroy his furniture". The tenant also testified that he has been getting assistance from his

government advocate to find new housing and that he has found alternative housing for January 1, 2017.

While the tenant may have had good excuses for failing to pay the rent, it does not change the fact that a tenant is required to pay the rent when it is due. Section 26 of the Act says as follows:

26 (1) 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.

In the present case, the tenant did not have a right under the Act to deduct all or a portion of the rent. As a result, the tenant is not entitled to an order cancelling the landlord's Notice.

I find that the landlord is entitled to an order of possession effective two days from the date of service.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to an order of possession 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.

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 06, 2016

Residential Tenancy Branch