



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR OPT FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46;
- an order of possession of the rental unit pursuant to section 54;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy for this 1 bedroom apartment unit began on January 1, 2014. Effective January 1, 2017 the monthly rent was \$820.00 payable on the 1st day of each month. The tenant paid a security deposit of \$380.00 at the start of the tenancy.

The tenant is alleging he did not receive any 10 Day Notice to End Tenancy as he was out of the country and is alleging the landlord illegally evicted him by changing the locks to the rental unit without obtaining an order of possession. The tenant testified that he

is an international student and has not had time to seek alternative accommodation and is seeking re-instatement of the tenancy.

The landlord advised that they took over possession of the rental unit as of September 22, 2017 as the tenant failed to pay rent and they considered the rental unit abandoned. The landlord advised they changed the locks to the rental unit and put a notice on the door advising the tenant his belongings had been placed in storage. The rental unit is now occupied by another tenant.

Analysis

As the landlord had taken possession over the rental unit more than three months prior to this hearing, I find the issue of the cancellation of any 10 Day Notice to End Tenancy is now a moot point. In addition, although pursuant to section 54 of the Act a tenant may make an application to request an order of possession of a rental unit, I find that such a remedy is not practical in this case as the rental unit is now occupied by another tenant.

Accordingly, the tenant's application is dismissed in its entirety without leave to reapply. The tenant is at liberty to reapply for any losses he may have suffered as a result of the alleged illegal eviction. I make no findings on the merits of this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 09, 2018

Residential Tenancy Branch