

DECISION

Dispute Codes CNR, MNDC, OPR, MNR, MNSD, FF

Introduction

There is an application by the Tenant to cancel a notice to end tenancy for unpaid rent and for a monetary order for compensation or loss under the Act.

The Landlord is also applying for an order of possession to confirm the notice to end tenancy for unpaid rent, a monetary order to keep the security deposit and for unpaid rent and the recovery of the filing fee.

Both parties attended by conference call and gave affirmed testimony.

Issues(s) to be Decided

Is the Tenant entitled to a monetary order for compensation or loss under the Act?

Has the Tenant proven their case to cancel the notice to end tenancy?

Has the Landlord proven that the Tenant has failed to pay rent to end the tenancy?

Is the Landlord entitled to an order of possession?

Can the Landlord keep the security deposit?

Background and Evidence

This tenancy began on August 1, 2010 on a 6 month fixed term lease. The monthly rent was \$1,885.00 payable by the 1st of each month. There was a security deposit of \$942.00 given on April 16, 2010 from a previous tenancy being applied to this one as agreed to by both parties.

The Tenant is making a claim of \$12,000.00 for compensation because he feels that the rental unit was over-priced since moving in approximately 2 years ago.

The Tenant has claimed that the ceiling fell approximately 6-8 months previously and that the Landlord was notified, but has failed to address the issue. The Landlord states that no such issue(s) were reported and that visual inspections by an agent has been

documented as of late September showing no such issues. The Tenant has moved the majority of their personal belongings out of the residence, but as yet not found new accommodations and has not determined when he will be moving. The Tenant also states that there is mold, electrical and asbestos problems, but has not provided proof of such issues or that the Landlord was notified. The Landlord's witness states that a video inspection was done with a 3rd party upon the Tenant being served with a 24 hour notice to enter the rental unit in September 2010. The witness contends that there is no proof of mold, electrical or asbestos issues. No video documentation was provided at the time of the hearing.

The Landlord states that issues of mold, electrical or asbestos problems has never been reported and that the Tenant has lived in the property for approximately 2 years with no prior complaints being reported.

The Landlord is making a claim of \$5,000.00, including the September and October 2010 rent arrears, \$50.00 for a NSF cheque returned by the bank as well as compensation for damages totalling \$2,200.00 in the Landlord's schedule of costs that were submitted in evidence.

Analysis

The \$12,000.00 amount claimed has no evidence to support it. The Tenant refers to compensation for the last 2 years, which were from a separate tenancy agreement. I find that the Tenant has not provided any evidence for a claim of compensation. I dismiss the Tenants claim for a monetary order.

The Tenant does not dispute the non payment of rent or the returned NSF cheque as provided in evidence by the Landlord from the bank. As such, I dismiss the Tenants application to cancel the notice to end tenancy and issue an order of possession to the Landlord for unpaid rent by the Tenant. The Tenant must be served with the order. If the Tenant fails to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord has applied for a monetary order for damages caused from the tenancy. As the tenancy has not yet ended, I find this premature. I dismiss with leave to reapply

the Landlord's application for damages. I find that the Landlord has proven their case for unpaid rent and make a monetary order. September and October rents of \$1,885.00 each and \$50.00 for the NSF cheque returned by the bank. I also find that since the Landlord was substantially successful in her application that she is awarded \$50.00 in the recovery of the filing fee equalling \$3,870.00. I order that the Landlord retain the \$942.00 security deposit and the \$3.55 in interest which has accrued to the date of this judgement in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$2,924.45.

This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$2,924.45. The Landlord may retain the security deposit.

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*.