



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes For the Landlord: OPR, MNR
 For the Tenant: RP, CNR

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for unpaid rent and an order of possession.

The Tenants applied to cancel a notice to end tenancy and for an order to have the Landlord complete repairs.

The Landlord's Agents and the Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

At the outset, I inquired of the Landlord's Agent CA the proper name to be listed as the Landlord, as she listed herself on the Application as Landlord; however the Tenant's Application, the Notice to End Tenancy and the Tenancy Agreement listed a company's name as Landlord. The Landlord's Agent CA stated that the Landlord should be listed by the company's name.

As a result, I amend the Landlord's application to reflect the company's name as Landlord.

As a preliminary issue, the Tenant testified that he delivered the Notice of Hearing and Application to the Landlord by placing the same in the mail slot. However the Landlord's Agents testified that they never received the documents, the Tenant was not clear as to the exact day of delivery nor did he have a witness present as to the delivery.

As a result, I informed the Tenant that the portion of his Application for an order to have the Landlord complete repairs would be dismissed, with leave to re-apply.

Issue(s) to be Decided

Have the Tenants breached the *Residential Tenancy Act* (the “Act”) or tenancy agreement, entitling the Landlord to an order for monetary relief and for an order of possession?

Are the Tenants entitled to cancel a notice to end tenancy for unpaid rent?

Background and Evidence

The tenancy began on June 1, 2010, on a one year fixed term basis, rent is \$875.00 per month, payable on the first day of each month and the Tenants paid a security deposit of \$437.50 on May 22, 2010.

The Landlord’s Agent gave affirmed testimony and supplied evidence that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) on February 4, 2011, by posting on the door. The Notice stated the amount of unpaid rent was \$1,339.00 and the stated effective move out date was listed as February 14, 2011. The Act states that a document delivered by posting on the door is deemed served three days later. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to February 17, 2011.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the Tenants had five days to dispute the Notice.

The Landlord’s Agent CA testified and supplied evidence the Tenants were consistently late in paying the rent and consistently made partial payments of rent. The Landlord’s Agent CA testified that as of the day of the hearing, the Tenants owed the amount of \$1,364.00, which includes unpaid rent and late and NSF fees.

The Tenant did not dispute this amount that was owed.

Analysis

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

Landlord's Application

Under section 26 of the Act, the Tenants are required to pay rent in accordance with the terms of the tenancy agreement and are not permitted to withhold rent without the legal right to do so. A legal right may include the Landlord's consent for deduction; authorization from a dispute resolution officer or expenditures incurred to make an "emergency repair", as defined by the Act. As the Tenant has not submitted evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, they have not met this criteria.

Where Tenants fail to pay rent when due, the Landlord may serve the Tenants with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the Tenants must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the Tenants disputed the Notice within five days. Where a Notice is disputed, the Tenants must be able to show that they do not owe the Landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the Tenants owed the Landlord rent when the Notice was issued, that they did not pay all or any of the rent owed to the Landlord within five days of receiving the Notice and the Tenants did not establish that they had the legal right to withhold the rent owed. Therefore, I find the tenancy has ended for the Tenants' failure to pay rent and the Landlord is entitled to regain possession of the rental unit. The Landlord is provided with an Order of Possession effective **2 days** after service on the Tenants.

This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$1,414.00** comprised of outstanding rent and fees of **\$1,364.00** and the **\$50.00** fee paid by the Landlord for this application.

I allow the Landlord to retain the deposit of \$437.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$976.50**.

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

Tenants' Application

As I have upheld the Landlord's Notice to End Tenancy for Unpaid Rent for the foregoing reasons, I **dismiss** that portion of the Tenants' application to cancel the Notice.

For the reasons cited above regarding the Tenants' failure to prove the Landlord was served with the Notice of Hearing, I **dismiss** that portion of the Tenants' application to have the Landlord complete repairs, with leave to re-apply.

Conclusion

The Landlord is granted an Order of Possession and a monetary order in the amount of **\$976.50**.

The Tenants' portion of their application to cancel the Notice is dismissed.

The Tenants' portion of their application to have the Landlord complete repairs is dismissed, with leave to re-apply.

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: February 22, 2011.

Residential Tenancy Branch