



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on February 04, 2011. The landlord confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on April 28, 2010. Rent for this unit is \$685.00 per month and is due on the 1st day of each month. The tenant paid a security deposit of \$500.00 on April 28, 2010.

The landlord testifies that he served the tenant with a 10 day notice to end the tenancy in person on February 02, 2011. This notice states the tenant has five days to pay the outstanding rent, or dispute the notice or the tenancy will end 10 days after service of the Notice. The Notice also states the tenant owes \$1,600.00 in unpaid rent and unpaid utilities of \$311.00. At the hearing the landlord declares that the tenant has not paid rent for January and February, 2011 of \$1,370.00 and she owes \$311.00 for utilities to a total sum of \$1,681.00. The landlord testifies that the tenant is continually late paying rent and he has given her some leeway for the months of her tenancy.

The landlord testifies that the tenant complained about some plumbing issues and he sent a plumber to the rental unit to look at the bathroom. The tenant has never put any concerns in writing to the landlord for him to take remedial action. The landlord requests an Order of Possession to take effect for March 07, 2011 but states if the tenant pays some of her outstanding rent by March 04, 2011 he will not enforce the Order of Possession and will have the roof and electrical issues looked at and make any necessary repairs.

The tenant testifies that she withheld her rent as the landlord did not make repairs to the roof and she has had to turn off the power to the bathroom due to water leaks in this area from the roof. The tenant testifies that these leaks are now also evident in the living room. The tenant agrees she owes rent for January and February, 2011 to the sum of \$1,370.00 and utilities of \$311.00. The tenant agrees she has not informed the landlord in writing of the repairs required or that she has no power in her bathroom.

Analysis

Section 26 of the *Act* states: *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.* Both parties agree that rent is due on the first day of each month and

the tenant agrees that she has a balance of rent outstanding for January and February, 2011 of \$1,370.00 and outstanding utilities of \$311.00.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days but did apply to cancel the Notice to End Tenancy.

Based on the foregoing, I find that the tenant owes rent to the landlord and consequently the Notice is upheld and I grant the landlord an order of possession as requested at this hearing pursuant to section 55 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and 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: February 28, 2011.

Residential Tenancy Branch