



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent, for monetary compensation under the Act or Tenancy Agreement, and for the return of personal property.

The Landlord applied for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent, a monetary order for unpaid rent, compensation for alleged damages to the rental unit, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Tenant alleged that the Act did not apply to this tenancy. She explained that she shared the bathroom and kitchen facilities with the Landlord. The Landlord testified he is not an owner of the property, instead, he has a lease with the owner of the rental property. Under section 4, living accommodations where the Tenant shares bathroom or kitchen facilities with the owner of the property are excluded from the Act. In this instance, the Tenant shares bathroom and kitchen facilities with a Landlord who does not own the property, and therefore, the Act does apply to this tenancy.

I also note that the Tenant has not yet vacated the property and therefore the parties respective claims for the return of personal property or for alleged damages to the rental unit are premature, and dismissed with leave to reapply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on February 18, 2011, by posting on the door. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant disputed the Notice, however, during the course of the hearing the Tenant acknowledged she has not paid all the rent due for February or March of 2011.

The Landlord testified that the Tenant paid a rent of \$440.00 per month, and in January the Tenant paid \$200.00 in rent, in February the Tenant paid \$200.00 and did not pay any rent for March of 2011. The Landlord testified that the Tenant informed him he could keep the security deposit of \$200.00 for the balance due for January 2011 rent.

The Tenant disputed the amounts owed and testified she wanted to provide documents in evidence to dispute the amounts.

Analysis

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

I find the Tenant has breached the Act and Tenancy Agreement by failing to pay rent. The Tenant provided insufficient evidence that the amounts claimed by the Landlord are not the amounts due in rent.

I find that 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.

I find that the Landlord has established a total monetary claim of **\$930.00** comprised of \$240.00 in rent due for January, \$240.00 in rent for February and \$440.00 in rent for March, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$200.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$730.00**. This order may be filed in the Provincial Court (Small Claims) 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: March 14, 2011.

Residential Tenancy Branch