

Decision

Dispute Codes: OPR, MNR, FF / MT, CNR, MNR, FF

Introduction

This hearing was convened in response to 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee; ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for unpaid rent or utilities / a monetary order as compensation for the cost of emergency repairs / and recovery of the filing fee. The tenants attended the hearing commencing at 9:30 a.m. and gave affirmed testimony.

The tenants testified that they had not been served with the landlord's application for dispute resolution and notice of hearing (the "hearing package"). The tenants also testified that they served the landlord with their hearing package by way of priority post. Further, in a letter submitted into evidence by the landlord which is dated August 3, 2011 and shown as mailed to the tenants by way of registered mail, the landlord makes reference to the "enclosed" notice of dispute resolution hearing "from me in response to your same notice to me." Despite all of the foregoing, the landlord did not appear at the hearing scheduled to commence at 9:30 a.m.

Following the conclusion of the hearing, it was noted that the hearing notice sent to the landlord in response to his application to the Residential Tenancy Branch, showed a start time of 10:00 a.m. (as opposed to the 9:30 a.m. start time shown on the hearing notice sent to the tenants in response to their application to the Residential Tenancy Branch.) Telus telephone records serve to confirm that while the landlord did not call into the conference call hearing beginning at 9:30 a.m., in regard to the hearing shown as scheduled to commence at 10:00 a.m. the landlord called in at 10:06 (and waited for approximately 5 minutes before disconnecting), and called in again at 10:14 a.m. (and waited approximately 31 minutes before disconnecting).

Issues to be decided

- Whether either party is entitled to any of the above under the Act

Background and Evidence

The tenants testified that the tenancy commenced more than 28 years ago and that no security deposit was ever collected. Effective July 1, 2011, monthly rent was raised to \$1,251.57 and was payable in advance on the first day of each month.

By letter to the landlord dated June 29, 2011, the tenants gave notice to end the tenancy. At that time, the tenants also issued a bank draft in favour of the landlord for \$590.00 as payment of rent for July, after withholding \$660.57 from full payment as follows:

\$160.00: water bill

\$250.00: tree branch removal

\$250.00: sewer line repair

\$000.57: "my trouble"

Arising from rent which was unpaid in full when due on July 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 26, 2011. The notice was served in person on the tenants on that same date. A copy of the notice was submitted into evidence.

Arising from rent which was unpaid when due on August 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 2, 2011. The tenants testified that they made no further payments toward rent after service of either of the above two notices, and that they vacated the unit on or about August 7, 2011.

The tenants testified that in view of the landlord's apparent decision not to pursue the matter by way of participation in the hearing, they themselves were satisfied simply to withdraw their application and to consider the matter resolved between the parties.

Analysis

As stated above, the tenants withdraw their application for dispute resolution.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, in light of the landlord's failure to attend the hearing scheduled to commence at 9:30 a.m. after being duly served with the tenants' hearing package, and in view of the landlord's apparent failure to serve the tenants with his own application for dispute resolution, the landlord's application is hereby dismissed.

Conclusion

The tenants' application is withdrawn.

The landlord's application is hereby dismissed.

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*.

DATE: August 29, 2011

Residential Tenancy Branch