



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. An Order compelling the Landlord to comply with the Act - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenant did not attend the hearing. As a result, I dismiss the Tenant's application. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing in person on February 28, 2014 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The month to month tenancy started on November 1, 2013. Rent of \$1,700.00 was payable each month on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit.

The Landlord states that he told the Tenant that the house would be sold and the Tenant orally agreed to move out of the house at the end of January 2014. The Landlord states however that the Tenant refused to move out of the unit and did not pay the rent for February 2014 so the Landlord served the Tenant with a 10 day notice for unpaid rent. The Landlord states that the Tenant was not given a two month notice to end tenancy for landlord's use by himself and he does not know much more about what notices were given to the Tenant as his real estate agent handled everything for him and he believes that the agent "screwed me up". The Landlord states that the house sale was completed with the new owners gaining ownership on February 28, 2014 and that as a result he no longer requires an order of possession. The Landlord states that he gave the security deposit to the Tenant through the real estate agent sometime in January or February 2014. The Landlord states that as of February 28, 2014 the Tenant was still in the unit however he does not know anything past this date and he believes that the new owners are trying to end the tenancy with the Tenant.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. As the Tenant did not appear at the hearing, only the Landlord's evidence was available. On this evidence, no rent was paid for February 2014. As it is unknown whether the Tenant was given a one month notice and was entitled to withhold this rent or was given the equivalent amount of rent, I find on the evidence before me that the Landlord is entitled to \$1,700.00 in unpaid rent. Further based on undisputed evidence I find that the Landlord returned the security deposit to the Tenant so the entitlement is not reduced by this amount. As the Landlord no longer requires an order of possession, I dismiss the claim for an order of possession.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,700.00**. If necessary, this order may be filed in the Small Claims 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: April 15, 2014

Residential Tenancy Branch

