

DECISION

Dispute Codes: OPC, ERP, RP, RR

This hearing dealt with a cross application by the parties. The landlord applied for an order of possession based on a notice to end tenancy for cause. The tenants applied for an order for the landlord to make emergency repairs for health or safety reasons and for rent reduction.

Issue #1 Whether the landlord is entitled to an order of possession

In December of 2007, the landlord and tenants entered into a verbal tenancy agreement. On December 21, 2007, the tenants began their tenancy with an obligation to pay a monthly rent of \$750.00 due in advance on the first of each month.

The tenants were late in paying rent during the month of March, May and August. The landlord said that on August 6, 2008, she mailed a package of documents to the tenants containing 1) a cover letter, 2) written verification of 3 late payments of rent, 3) page 12 of the Residential Tenancy Act and 4) a notice to end tenancy completed on the prescribed form. The tenants acknowledged receipt of this package but said that it did not contain a notice to end tenancy completed on the prescribed form. The tenants maintained that the landlord had completed the notice to end tenancy on the prescribed form later and never sent them a copy of it. I have accepted the tenants' testimony in this regard to be credible for these reasons. The cover letter dated August 6, 2008 states that the enclosure includes a page of the Residential Tenancy Act and written verification for three late payments but it makes no mention of a separate notice to end tenancy as being part of the enclosure. Rather, it states that "As per the Residential Tenancy Act, please consider this as your One-Month Notice to End Tenancy". The above evidence indicates to me that the landlord had intended for the cover letter to serve as a notice to end tenancy.

Section 12(4) of the Residential Tenancy Regulations states that the landlord must use the approved notice to end tenancy form from the Residential Tenancy office to give notice to the tenant. In this case, the landlord had failed to do so.

Furthermore, on August 13, 2008, the landlord and tenants verbally agreed for the tenancy to continue. In fact, on August 24, 2008, the landlord drew up a lease agreement intending for the tenants to continue their tenancy. This lease agreement was sent to the tenants for signatures along with a request for a security deposit.

Based on the above, I dismiss the landlord's application for an order of possession.

Issue #2 Whether the tenants are entitled to an order for the landlord to make emergency repairs for health or safety reason and for rent reduction

The tenants sent a letter dated September 5, 2008 to the landlord outlining the emergency repairs that needed to be done. The tenants said that the post office tracking showed that the landlord received the letter on September 8. The landlord said that by September 11, her contractor, _____, did an assessment on the damages. She also said that during the assessment, _____ and the tenants had some disagreements and the tenants refused _____ further entry into the property. On the same day, the landlord and the tenants made an appointment to meet each other at the property for the next day. On September 12, the landlord requested the police to accompany her to the property because of the verbal abuse she and her family had suffered from one of the tenants. The tenants were not present. So upon the advice by the RCMP, the landlord used her key to gain entry into property to take photos of the damages. At one point, the tenants returned and refused the landlord entry into the property. They told the landlord that she needed to give them a written notice to gain any further entry into the property. The landlord then attempted to give the tenants a written notice requesting entry into the property for the next day, September 13. The tenants refused to accept the written notice and told the landlord that they were not allowed further entry into the property because the matter was before

the Residential Tenancy Branch.

The above evidence indicates that the landlord has taken expeditious measures to investigate the reported damages in the rental unit. At the same time, the tenants have failed to cooperate or to make reasonable efforts to accommodate the landlord's actions in addressing the repairs. The landlord must be given the opportunity and reasonable amount of time to assess and complete the reported repairs. I therefore dismiss the tenants' application for an order for the landlord to make emergency repairs for health or safety reasons and for rent reduction. The tenants may re-apply for such an order should the landlord fails to complete the necessary repairs despite the tenants' cooperation.

Conclusion

I dismiss the landlord's application for an order of possession based on an order to end tenancy for cause. I also dismiss the tenants' application for an order for the landlord to make emergency repairs for health or safety reasons and for rent reduction with leave to reapply

Dated October 09, 2008.