

DECISION

Dispute Codes: OPR, OPL, MND, MNR, MNSD, MNDC, CNC

Introduction

This hearing dealt with a cross applications. The landlord made an application for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants made an application to cancel the notices to end tenancy and compensation for their loss of quiet enjoyment of the rental unit.

Preliminary Matters

The landlord withdrew her application for an order of possession as the tenants moved out on May 18, 2009. I therefore dismiss the landlord's application in this regard. The tenants also withdrew their application to cancel the notices to end tenancy. I therefore also dismiss the tenants' application in this regard.

The landlord also withdrew her application for a monetary order for costs incurred in addressing the damages and compensation for loss under the *Act* and the tenancy agreement. The landlord said that the tenants moved out 3 days ago and she needed more time to prepare for her claim of damages. I therefore dismiss the landlord's application in this regard with leave to re-apply.

Issues to be Decided

Whether the landlord is entitled to a monetary order for loss of income and an order to retain the security deposit in partial satisfaction of the claim?

Whether the tenants are entitled to compensation for the loss of quiet enjoyment of the rental unit?

Background and Evidence

On February 17, 2009, the landlord collected a security deposit in the amount of \$400.00 from the tenants. The tenancy began on March 1, 2009 with a fixed term ending on April 30, 2009. A monthly rent in the amount of \$800.00 was payable in advance on the first day of each month. On April 24, 2009, the landlord served the tenants with a notice to end tenancy for cause. On May 2, 2009, the landlord served the tenants with another notice to end tenancy for unpaid rent. On May 18, 2009, the tenant moved out of the rental unit.

Analysis

Issue #1 – Whether the landlord is entitled to a monetary order for loss of income and an order to retain the security deposit in partial satisfaction of the claim?

The landlord said that the tenancy ended on April 30 whereas the tenants did not moved out until May 18. The landlord is seeking recovery of a loss of income in the amount of \$800.00 for the month of May. The tenants did not dispute that they have not paid the May rent. Based on the above, I find that the landlord has established a claim for \$800.00 in loss of income. I order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$400.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Issue #2 – Whether the tenants are entitled to compensation for their loss of quiet enjoyment of the rental unit?

The tenants are claiming \$800.00 compensation for the loss of quiet enjoyment of the rental unit and they gave the following evidence in support of their claim. On April 1, 2009, the tenants and the landlord agreed to meet at the rental unit for the landlord to pick up the rent check for April. When the landlord arrived, the landlord was screaming and yelling. The tenants told her to leave and eventually called the police. The next day, the landlord posted a notice to end tenancy and three post-dated rent checks on the tenants' door. On April 5, the landlord called Child Welfare office to report the April 1 incident. On April 22, the landlord and a friend came to the rental unit asking for a post-dated check for the May rent. I have not accepted the tenants' evidence with respect to incidents that took place in May as the tenancy ended on April 30.

The landlord gave the following evidence with respect to her encounter with the tenants in April. On April 1, the tenants paid the April rent in cash but did not allow the landlord to count the bills. The tenants also did not allow the landlord to write out a rent receipt. On April 2, the landlord did not serve the tenants with a notice to end tenancy but she did return the three post-dated rent checks by posting them on the tenants' door. On April 22, she and her friend attended the rental unit to collect a post-dated rent check for May. The tenants refused to give such a check and started yelling at them. Eventually, the male tenant called the police with the accusation that he was threatened by the landlord's friend. The landlord maintained that her friend was brief and polite with his encounter with the tenants. The next day, the landlord's friend went into the police station to give a statement.

The Residential Tenancy Policy Guideline #6 states that "in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. The Policy Guideline goes on to give several examples which might constitute such interference. These examples include: 1) entering the rental premises frequently,

or without notice or permission, and 2) persecution or intimidation. Based on the above, I find no evidence that the landlord had entered the rental unit frequently, or without notice or permission. I also find insufficient evidence of persecution and intimidation of the tenants by the landlord. I therefore conclude that the tenants have not proven any substantial interference of the quiet enjoyment of the rental unit.

I therefore dismiss the tenants' claim for compensation for their loss of quiet enjoyment of the rental unit.