



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR MNDC OPR MNR MNSD FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied to cancel a notice to end tenancy for unpaid rent, and for a monetary order for damage or loss under the Act, regulation or tenancy agreement. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. One of the two tenants, a witness for the tenants and the landlord all participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to a monetary order for unpaid rent?

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 19, 2009. The tenancy agreement states that the tenancy is a fixed term of "minimum 6." Rent in the amount of \$600 is payable in advance on the 19th day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$300.

The relevant evidence of the landlord was as follows. The tenants failed to pay rent when it was due on August 19, 2009. The tenants paid \$300 near the end of August 2009. On September 10, 2009 the landlord served the tenants with a notice to end tenancy for unpaid rent. The notice stated that the tenants failed to pay rent in the amount of "full amount" on August 19, 2009. The tenants failed to pay any further rent until September 23, 2009, when they made another payment of \$300. Although the

tenants paid these amounts in cash, the landlord did not provide any receipts as evidence of these payments.

The evidence of the tenants was as follows. On August 12, 2009, the landlord gave the tenants a letter stating that the City would not allow the landlord's daycare license if there were tenants in the residence, and therefore the tenants they would have to move out by August 19, 2009. The move-out date was later amended to September 1, 2009. The tenants paid \$300 and had a verbal agreement with the landlord that he could keep the security deposit to cover the remainder of the rent. Within five days after receiving the notice to end tenancy for unpaid rent, the tenants attempted to pay the landlord the balance of rent, but they refused to accept it and insisted that the tenants must move out. The tenants again attempted to pay the full rent of \$600 due on September 19, 2009 but the landlord again would not accept it. The tenants submitted that they have a six month fixed term lease and the landlord was breaking the lease, and on that basis the tenants have applied for compensation of \$1800, equivalent to three months' rent.

Analysis

In considering all of the relevant evidence, I find that the landlord failed to provide sufficient evidence to support the notice to end tenancy. The landlord's testimony was that the tenants paid \$300 of the rent before he issued the notice to end tenancy, and yet the notice states that the "full amount" of rent was still owed on September 10, 2009. Further, the landlord stated that he received a payment of \$300 near the end of August, but he did not provide evidence, such as a copy of a rent receipt, to support his testimony. When a tenant pays rent in cash, the landlord is required to issue a receipt. I therefore find that the notice to end tenancy is not valid.

I further find that the landlord has not supported his monetary claim for unpaid rent with sufficient evidence to establish what amount of rent is outstanding. However, the tenants did acknowledge that some rent was outstanding, and I therefore dismiss the portion of the landlord's application regarding the monetary claim with leave to reapply.

In regard to the tenants' claim for monetary compensation, I find that the tenants have not provided sufficient evidence of any loss they have suffered for which they are entitled to monetary compensation. The landlord improperly attempted to evict the tenants and the tenants refused to move. The landlord issued a notice to end tenancy for unpaid rent, and the tenants properly disputed the notice. I therefore dismiss the portion of the tenants' application regarding monetary compensation.

I note that a tenant may not apply the security deposit toward unpaid rent unless they have the landlord's written consent to do so. In this case, the landlord therefore still retains the security deposit of \$300, and he may do so until such time as the tenancy end, the landlord gives written consent for the security deposit to be applied toward unpaid rent or as otherwise ordered by a dispute resolution officer.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues. The landlord's application is dismissed. As the landlord's application was not successful, he is not entitled to recovery of the filing fee for the cost of his application.

As the tenants were successful in disputing the notice to end tenancy, they are entitled to recovery of part of their filing fee, in the amount of \$25. The tenants may deduct \$25 from their next month's rent.

Dated October 8, 2009.