

DECISION

Dispute Codes OPL MNR FF

Preliminary Issues

The Landlords testified that they were not served with copies of the Tenant's evidence.

The Tenant confirmed that he did not send the Landlords copies of their evidence.

The Residential Tenancy Branch Rules of Procedure (RTBRP) # 4.1 stipulate that the respondent must serve each applicant with copies of all their evidence. If I were to consider evidence not served on the other party it would constitute a breach of the principles of nature justice, consequently I do not accept the Tenants' evidence, in accordance with section 11.5 of the RTBRP.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for Landlord's use of the property, and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 30, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenants are deemed to be served the hearing documents on December 5, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both Landlords and the male Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession and a Monetary Order under Sections 26, 49, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The undisputed testimony was that the Tenants took occupancy of the rental unit on January 1, 1990 at which time a security deposit of \$550.00 was paid. The current Landlords purchased the property on July 1, 2000. The current monthly rent is payable on the first of each month in the amount of \$1,467.00.

The female Landlord testified that both Landlords personally served the male Tenant with the Two Month Notice to End Tenancy for Landlord's Use on October 14, 2009 at the rental unit.

The male Tenant confirmed receipt of the Two Month Notice to End Tenancy for Landlord's Use and testified that they did not file an application with the Residential Tenancy Branch to dispute the notice to end tenancy.

The female Landlord testified that the Tenants have failed to pay November 2009 rent, December 2009 rent, and January 2010 rent.

The male Tenant testified that they have not paid the last three months of rent because the Landlords owe the Tenants money in exchange for work and materials they put into the rental unit. The male Tenant argued that they had a written agreement with the Landlords which states that the Landlords would pay for necessary repairs. The Tenant confirmed that the written agreement does not state that the Tenants are allowed to stop paying rent or deduct costs of work performed from the monthly rent.

Analysis

Order of Possession Upon review of the Two Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act.

The notice was received by the Tenants on October 14, 2009 and the effective date of the notice is December 31, 2009 pursuant to section 90 of the Act. I accept the evidence before me that the Tenants have failed to apply to dispute the Notice within the 15 days granted under section 49 (8) of the Act.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 49 (9) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I approve the Landlord's request for an Order of Possession.

Unpaid Rent I do not accept the male Tenant's argument that the Tenants' violation of section 26 of the Act in not paying their rent was somehow excused due to the Landlords' alleged failure to comply with an agreement for work to be performed around the rental unit. Even if the Landlord was found to be in violation of the Act, there is no provision in the Act that extends immunity for a reciprocal breach on the part of Tenants.

In the case before me the Landlords are required to compensate the Tenants with a monetary amount equal to one month's rent when issuing a Notice to End Tenancy for Landlord's Use. Based on the aforementioned I hereby consider the January 2010 rent to be paid in full as the Tenants' compensation for receiving the Two Month Notice to End Tenancy. Therefore I hereby award the Landlord a monetary order for two months unpaid rent of \$2,934.00 (November 2009 and December 2009).

As the Landlords have been successful with their claim I award the Landlords with recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit, and that the Landlords are entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for November 2009 and December 2009 @ \$1,467.00 per month	\$2,934.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$2,984.00
Less Security Deposit of \$550.00 plus interest of \$290.97 from January 1, 1990 to January 11, 2010	-840.97
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,143.03

Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for \$2,143.03. The order must be served on the respondent and is enforceable through the Provincial Court 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: January 11, 2010.

Dispute Resolution Officer