

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, MNDC, OLC, RP, RR, O FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and for a monetary order. The tenants applied to cancel the notice to end tenancy, for a monetary order and for orders to have the landlord comply with the Act.

The hearing was conducted via teleconference and was attended by the landlord and his agent and the tenants.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided whether the tenants are entitled to cancel the notice to end tenancy; for a monetary order for the cost of emergency repairs, and compensation for damage or loss under the *Act*; for an order to have the landlord comply with the *Act* and to make repairs to the unit, pursuant to Sections 32, 33, 46, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a handwritten tenancy agreement signed by both parties on July 3, 2009 for a 12 month fixed term tenancy for a monthly rent of \$1,300.00 due in the beginning of each month, the agreement specifically requires the tenants to “fix the house (i.e. do any repairs as needed)”;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 19, 2010 with an effective vacancy date of January 19, 2010 for unpaid rent in the amount of \$1,300.00 due January 1, 2010; and
- A copy of a signed statement from witness to the delivery of the 10 Day Notice.

The tenants submitted into evidence the following documents:

- A 3 ½ page summary of why the tenants feel the lease agreement isn't suitable with the law, dated January 2, 2010. This documents outlines a number of

issues the tenant believes to be the responsibility of the landlord to fix and or repair;

- Miscellaneous receipts for items such as paint, screwdrivers, clamps, gasoline; bic lighters; bulb; exhaust fan; key blanks; crazy glue; household cleaners; balloons; and several un-itemized receipts;
- A notice of claim of a plumbing company hired by the tenants to complete work on the rental property;
- A copy of a handwritten tenancy agreement signed by both parties on July 3, 2009 for a 12 month fixed term tenancy for a monthly rent of \$1,300.00 due in the beginning of each month, the agreement specifically requires the tenants to "fix the house (i.e. do any repairs as needed)";
- A copy of a handwritten notice to end tenancy dated January 4, 2010 signed by both parties;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 19, 2010 with an effective vacancy date of January 19, 2010 for unpaid rent in the amount of \$1,300.00 due January 1, 2010; and
- A letter from a collection service regarding an outstanding bill from a plumbing company hired by the tenants to complete work on the rental property;
- An outline of the monetary claim the tenants are seeking, including a listing of hours of work for the tenants labour of \$7,590.00; materials and direct costs (i.e. vehicle repairs and gas; phone and communications and assorted materials) of \$1,735.27; and the outstanding plumbing bill of \$1,318.79;
- An invoice dated June 29, 2008 for carpet and insulation in the amount of \$970.00; and
- 22 undated photographs showing the rental unit and yard.

In the hearing both parties agreed the tenants had paid the rent for January 2010 on January 21, 2010, but that the tenants have not paid rent for the months of February 2010 and March 2010.

The tenants testified that the landlord had failed to have the rental unit in a liveable condition at the start of the tenancy and that because of that they have had to do more repairs than they anticipated when they signed the agreement. No move in condition inspection report was completed at the start of the tenancy.

The landlord testified that the tenants did not approach him regarding any repairs except for the furnace, which both parties agreed the landlord repaired at no cost to the tenants. He further testified that the tenants hired the plumbing contractor without his approval or knowledge.

The tenants stated the photographs submitted were taken when the tenancy began but the landlord's agent testified that those photographs are how the property and rental unit look now.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the rent is due by issuing a 10 day notice to end the tenancy. The notice allows that if the tenants pay the rent within 5 days the notice has no effect and the tenancy may continue. In this case the tenants paid the rent within the 5 days and as such, I find the notice has no effect.

However, Section 26 requires tenants to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. As the tenants have not paid rent for February and March 2010, I order the tenants to pay total amount to the landlord.

As to the tenants' claim for the work they have done on the rental unit, the tenants have failed to provide any evidence as to the condition of the rental unit at the start of the tenancy and as such, I cannot determine if any of the work was warranted.

As well, the tenancy agreement the parties entered into shows a rent reduction of \$200.00 per month on the condition that the tenants make repairs to the rental unit. If there is a monetary figure attached to the value of repairs the tenants completed it should be based on what both parties understood to be the value. In this case, to date, the value of the repairs would be at most \$1,800.00.

However, I also find that the tenants have been unable to establish any expenses were incurred specifically for repairs, other than a couple of receipts that list paint in the amount of \$23.30. The receipts submitted included items such as household items and bic lighters and vehicle gas and repairs as well as many un-itemized receipts, as such, I cannot determine if the receipts are germane to this tenancy or repairs.

As well, in the event of a need for emergency repairs Section 33 of the *Act* requires the tenants to try to contact the landlord at least twice and then to give the landlord reasonable time to make the repairs. The tenants have not provided any evidence regarding any current repairs that are considered emergency repairs; as such I find the tenants are not entitled to a rent reduction.

The tenants indicated the landlord didn't want to hear about any repairs but they have failed to provide any evidence of providing the landlord any notification that these repairs were required or that they gave him a reasonable time to make the repairs. I find that the tenants contacting a plumber without consultation with the landlord forfeits the tenants' claim for the costs of associated with the work of the plumbing contractor.

Conclusion

For the reasons noted above, I find the landlord is not entitled to an order of possession based on the 10 Day Notice to End Tenancy dated January 19, 2010, I therefore dismiss this portion of the landlord's application.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$2,626.70** comprised of \$2,600.00 rent owed less \$23.30 in paint costs incurred by the tenants and the \$50.00 fee paid by the landlord for this application.

For the reasons noted above, I dismiss the tenants' application in its entirety, without leave to reapply, except for the amount noted above for paint costs.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: March 09, 2010.

Dispute Resolution Officer