DECISION

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

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to have a section 46, 10 day Notice to End Tenancy cancelled and a request for a monetary claim for $5,894.50.

The landlord's application is a request for an Order of Possession based on the section 46, 10 day Notice to End Tenancy, and a request for a monetary order for $5,500.00

Both the landlords in the tenants are also requesting that the other bear the cost of the filing fee they paid for the dispute resolution hearing.

Tenants application

Background and Evidence

Both sides agree that they signed an agreement in which the rent was initially reduced from $1750.00 per month to $1600.00 per month because the tenants agreed to do upkeep in the rental unit as needed.

All sides further agree that a subsequent agreement was signed in which the landlord agreed to reduced the rent to $800.00 per month for January 2010 and $800.00 per month for February 2010, in lieu of payments for renovations and repairs needed in the rental unit with rent going back to $1600.00 per month as of March 2010.

The tenants are now claiming that they were unable to get the repair work done for the amount they were allowed in rent reductions, and therefore the landlord subsequently agreed, by handshake, to pay them to continue to do more work.

The tenants are therefore requesting that they be paid a further $5,894.50 for this extra work that they claim was agreed upon by a handshake.

The landlord testified that the only agreement with the tenants was that they would do the needed work in this rental unit for the initial rent reduction from $1750.00 per month to $1600.00 per month plus the subsequent reduction of $800.00 per month for the months of January 2010 and February 2010 and there was never any handshake agreement as claimed by the tenants to do any further work, or that the landlord would pay for any further work.

The landlord therefore requests that this application by the tenant be dismissed in full.

Analysis

When I am faced with conflicting testimony, I must look to any written documentation, and in this case it's very clearly written that the parties agreed to a rent reduction to do work in the rental unit. The tenants claim that there was a further handshake

agreement however they have no evidence to support this claim, there was nothing put in writing and the landlord denies that there was ever any handshake agreement.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondents that burden of proof is not met.

Therefore it is my finding that the tenants have not met the burden of proving that there was ever any agreement to pay for anything over and above the amount allowed in the written agreements.

I therefore will not be issuing a monetary order against the landlord, nor will I be setting aside the Notice to End Tenancy.

Conclusion

The tenant's application is dismissed in full without leave to reapply

Landlords application

Background and Evidence

As stated above the landlord had agreed to a rent reduction of $800.00 per month for the months of January 2010 and February 2010 in exchange for work being done on the rental unit.

The landlord is now claiming that the work was not done to his satisfaction and therefore he believes the tenant should pay the extra $800.00 per month that was deducted from the rent, for a total of $1600.00.

The landlord is also requesting an order for $700.00 rent outstanding for March 2010, $1600.00 outstanding for April 2010, and $1600.00 outstanding for may 2010 for a total of $3900.00.

Landlord is also requesting an Order of Possession based on the section 46, 10 day Notice to End Tenancy that was served on the tenants on March 24, 2010.

Analysis

The landlord agreed to a rent reduction of $800.00 per month for January 2010 and February 2010 in exchange for work being done on the rental property however the agreement is not specific on what work is to be done how it's to be done etc. The tenants have done work on the rental unit and although it may not be to the landlord satisfaction it is my decision that he is bound by the agreement to reduced the rent by $800.00 per month for those two months, and therefore I will not order that the tenants pay the $800.00 per month that was deducted from the rent.

I do allow the landlords claim however for the outstanding rent, because the tenants had no authority to withhold that rent and in fact the tenants application in which they requested that they be allowed to reduce the rent for repairs, has been dismissed.

I also allow the landlords request for an Order of Possession because the landlord did serve a proper 10 day Notice to End Tenancy and it is still a valid notice.

I also allow the landlords request for the $50.00 filing fee that was paid for his application for dispute resolution.

Conclusion

I have issued an order for the tenants to pay $3950.00 to the landlords and the remainder of the monetary claim is dismissed without leave to reapply.

I have also issued an Order of Possession to the landlord which is enforceable two days after service on the tenants.

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: May 14, 2010.

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Dispute Resolution Officer