



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlords, their witness and the tenants.

The tenant testified that he had submitted a letter of explanation of the total amounts he required for payment from the landlord for the work done via facsimile on August 17, 2010 and that he mailed a copy to the landlord on August 18, 2010.

The landlord testified that they had not received this letter. I have also confirmed that this letter was not received by the Residential Tenancy Branch prior to this hearing or the writing of this decision.

The tenants' witness was not available during the hearing, I attempted twice to call the witness into the hearing and both times received his answering service. The witness did not attend at any time during the hearing.

Issues(s) to be Decided

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

It must also be decided if the tenants are entitled cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to sections 46, 67 and 72.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on October 17, 2009 for a 1 year fixed term tenancy beginning on November 1, 2009 with a monthly rent of \$1,230.00 due on the 1st of the month, with a security deposit of \$615.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 29, 2010 with an effective vacancy date of July 10, 2010 for rent in the amount of \$6,150.00;
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid rent that states on June 29, 2010 at 10:30 a.m. the landlord served the notice to the male tenant in person and that this service was witnessed by a third party;
- A copy of the tenant's notice to end tenancy dated May 22, 2010 that states the tenants will be vacating the rental unit by July 20, 2010. The note states that because the male tenant is not working they need to find something cheaper;

The male tenant confirmed that he had provided the landlord with a notice to end the tenancy effective July 20, 2010 but that he did not vacate the rental unit because he believes that he would not receive the money he feels the landlords owe him for work he has done on the rental unit.

The landlord acknowledges that when the tenancy began the male tenant stated he would do work on various parts of the house and yard, including painting the kitchen cabinetry; tile some floors, work on the fireplace and yard. The landlord states that no promises were made regarding any compensation for the work.

While the landlord's original application stipulates a monetary claim of \$6,150.00 representing rent for the months of February, March, April, May and June 2010 the landlord notes the tenant has not paid rent for July or August 2010 either leaving a total arrears in the amount of \$8,610.00.

The tenants contend that they had an additional agreement with the landlord that any work completed by the tenants would be compensated for through the reduction of rent. The tenant submits that this agreement was not in writing but that he had a witness who was there the day the tenants signed the tenancy agreement and came to this secondary verbal agreement. As noted above the witness was not available for this hearing.

The landlord's witness provided testimony that upon her inspection of the rental unit she found, based on the age and condition of the rental unit, the landlords clearly maintained the property well but they did not upgrade or update it over the years. She notes she was surprised the landlord's would have agreed to such updates as the tenant was completing. The witness stated she had no direct knowledge of any verbal agreements between the landlords and tenants.

Analysis

A tenancy agreement is defined under the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

I accept the parties entered into a tenancy agreement that stipulates the tenants are responsible to pay rent in the amount of \$1,230.00 per month due on the 1st of the month. The tenant has failed to provide sufficient evidence to substantiate his claim that an additional agreement for renovations completed by the tenant would reduce the rent by any amount.

As such, I find that any subsequent agreement between the parties does not constitute a part of the tenancy agreement and therefore has no impact on the amount of rent due to the landlord on the 1st of each month. I therefore find the tenants are responsible for the payment of rent for the months of February, March, April, May, June, July and August 2010 in the amount of \$8,610.00.

I also find that the landlord has sufficient grounds under Section 46 of the *Act* to end the tenancy for unpaid rent. In addition, the tenants provided their own notice to end the tenancy in accordance with Section 45 of the *Act* and failed to vacate the rental unit on the effective date of that notice.

Conclusion

Based on my findings above I dismiss the tenants' Application, in its entirety, without leave to reapply.

I 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 tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$8,710.00** comprised of rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants 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: August 25, 2010.

Dispute Resolution Officer