



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNC, MNDC, FF

For the landlord – OPC, MNR, MNDC, MNSD, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek to cancel the One Month Notice to End Tenancy for cause. They also seek a Monetary Order for money owed or compensation for damage or loss under the Residential tenancy Act, Regulations or tenancy agreement and to recover their filing fee for this proceeding.

The landlord seeks an Order of Possession for cause, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, Regulations or tenancy agreement, an Order to keep the tenants security deposit and recover their filing fee.

I am satisfied that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to cancel the One Month Notice to End Tenancy?
- Are the tenants entitled to a Monetary Order for money owed or compensation under the Act?

Residential Tenancy Branch
Ministry of Housing and Social Development

- Is the landlord entitled to an Order of Possession based on the One Month Notice to End tenancy?
- Is the landlord entitled to a Monetary Order for:
 - a) Unpaid rent?
 - b) Money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy agreement started on March 23, 2010 and is a fixed term tenancy due to expire on March 23, 2011. The tenant's state that they were unable to move into the rental unit until April 01, 2010 as the landlord had not removed her personal belongings and the unit was in an unclean condition and required some decorating. Rent for this unit is \$1,500.00 per month and is due on the first of each month. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$200.00 on March 23, 2010.

The landlords' application

The landlord states the tenants were given a One Month Notice to End Tenancy on August 01, 2010 to end the tenancy by August 31, 2010. The landlord realized this Notice should have been given by July 31, 2010 to be effective for August 31, 2010 and so she gave the tenants another Notice to End Tenancy on August 31, 2010. This Notice gave an effective date to end the tenancy of August 31, 2010 but the landlords seek to amend this to to end the tenancy for September 31, 2010.

The reasons given on this notice are that the tenants are repeatedly late paying rent. The landlord states the tenants have been late with rent on three occasions when there was no money in their account to honour their rent cheques the tenants rent cheque for August 01 was returned as there was insufficient funds available. The landlord presented this again on August 03, 2010 and has provided a letter from their bank to show that funds were not available. The landlords have provided a letter from their bank to show that Septembers rent cheque was non-

Residential Tenancy Branch
Ministry of Housing and Social Development

negotiable. September's rent was paid on September 04, 2010. The landlord also states the tenants owe an amount of rent from March 23 to March 31, 2010 for the first eight days they lived in the rental unit.

The tenants dispute the landlords claim that they are repeatedly late paying rent. The tenants have provided a copy of their August bank statement to show that \$2,963.63 was deposited into their account on July 30, 2010 and there would have been funds available to cover their rent cheque. They also state that as this sum deposited contained some cheques some of these cheques may have been uncleared when the landlord presented their rent cheque. These sums have now been paid in full. The tenants have also provided a copy of their September bank statement which shows the sum of \$1,500.00 being cleared from their account on September 01, 2010 so dispute the landlords' evidence that this cheque was uncleared. The tenants state that they did not owe rent for eight days in March, 2010 as they were unable to move into the rental unit on March 23, 2010 as per the tenancy agreement but did move in on April 01, 2010 as agreed, due to the landlords' belongings and the condition she left the rental unit in.

The second reason given on the Notice is that the tenants have engaged in an illegally activity that has or is likely to: damage the landlords property, adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord and has jeopardized a lawful right or interest of another occupant or the landlord. The landlord testifies that the tenants have smoked marijuana in the property and she does not want to get a reputation for allowing drug use at the property. The landlords' interpreter attending the hearing and the landlords' daughter attending also gave witness statements that on May 30, 2010 the interpreter witnessed a strong smell of marijuana and the landlords' daughter claims she also witnessed this on August 10, 2010. The landlords' interpreter also states that the male tenant told him that he smoked marijuana. Neither party actually saw either tenant smoking but testify that they could just smell it.

The tenants dispute the landlords' claims. They state they do not smoke marijuana and the female tenant only smokes cigarettes outside the unit. The female tenant states she is a teacher and they have a five year old daughter and would not smoke illegal substances. The

Residential Tenancy Branch
Ministry of Housing and Social Development

tenant's testify that they have complained to the landlord about a neighbouring tenant smoking marijuana because the smell of it filtered through to their unit. The tenant claims when they complained the landlord did not take any action but just laughed at them. The tenants claim that on May 30, 2010 they were not at the rental unit as they were away for the weekend.

The landlord testifies that due to the tenants drug use it has affected her quiet enjoyment, safety, security and physical well being as she does not want criminally activities taking place in her house. The landlord also states the tenants have placed 22 cartoons of their belongings in her attic when they only had permission to store two boxes.

The tenants again dispute any drug use or criminal activities. They state that when they moved in they helped the landlord move her belongings left in their unit up into the attic. At that time the tenants state the landlord showed them an area they could use for storage space and even helped the tenants move their belongings into this space. The tenants state that because the landlord has now objected to them using the attic space they have removed their belongings.

The landlord states the tenants have jeopardized her lawful right as they have been collecting signatures from other tenants and telling other tenants that the landlord does not give back their security deposits.

The tenants testify that they were gathering evidence when they approached the other tenants and asked them if they were paying rent and would they be willing to sign document to that affect. The tenants claim the other tenants agreed to do this and they did not harass them.

One the One Month Notice submitted in the landlords' evidence she claims the tenants have breached a material term of the tenancy by smoking inside the building, having a two pets, parking their trailer and using storage space in the attic.

The tenants testify, and have provided a copy of the One Month Notice given to them by the landlord, that the landlord has altered her copy and their notice is different to the copy submitted by the landlord. They claim the landlords copy in her evidence is half hand written and half

Residential Tenancy Branch
Ministry of Housing and Social Development

typed and the last reason given on the Notice is different. The tenants notice has the third reason as the tenants have assigned or sublet the rental unit without the landlords' written consent. The tenants copy has been signed by the landlord.

The tenants dispute the reasons given on the Notice. They testify that they have never sublet their rental unit, they testify that they do not smoke in the house, they claim they only use their own designated parking space and parked their trailer there when they were removing their belongings from the attic and they claim that the landlord knew they had a dog and a cat and they paid a \$200.00 pet damage deposit for these pets.

The landlord denies altering the One Month Notice.

The landlord seeks to recover unpaid rent from March 23, to April 01, 2010 of \$354.00. The landlord seeks compensation for the tenant's use of her storage space of \$240.00. The landlord seeks compensation of \$75.00 from the tenants for parking their trailer outside the unit. The landlord states the tenants owe an outstanding utility bill from March, 2010 of 62.89 and owe \$144.00 in unpaid hydro bills for Hydro used during their tenancy.

The tenants state they do not owe rent for March, 2010 as they could not move in due to the landlords actions. They state they do not owe storage as the landlord allowed them to use this space and they dispute the landlords claim for parking as they state they have only used their designated parking area for the trailer. The tenants also claim they do not owe hydro for March, 2010 as they did not live in the unit and therefore did not use any utilities and they also state they have paid the amount owed of \$138.50 and have provided a copy of the utility bill which the landlord has signed and stated \$138.50 paid on September 16, 2010.

The tenant's application

The tenants testify that they are both working professional who have had to take a great deal of time off work to deal with the landlords' harassment. The tenants seek compensation for this time for two days off work at eight hours a day at \$65.00 per hour to a sum of \$1,040.00. The

Residential Tenancy Branch
Ministry of Housing and Social Development

tenants also seek compensation for dealing with the false and frivolous accusations by the landlord which has caused their family a great deal of stress.

The landlord disputes the tenants claim. The landlords' daughter states the tenants have been disrespectful to her and her mother.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords application for an Order of Possession based on the reasons given on the One Month Notice to End Tenancy for Cause; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided no evidence to support her claim that the tenants smoke marijuana on the property, the landlord has provided no evidence to support her claim that the tenants have jeopardized a lawful right of the landlord or that they have harassed or disturbed other tenants or the landlord and I find a tenant is entitled to gather evidence to support their dispute. Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I have also reviewed the two One Month Notices submitted by the Parties and find that the Notice given to the tenants is different from either Notice the landlord has submitted. In order for a Notice to be legal and binding the Notice submitted in evidence by the landlord must not be altered in any way and must be a true copy of the Notice given to the tenants. It is my decision that the Notice submitted by the landlord is not a true copy of the Notice given to the tenants and consequently the Notice would have been cancelled in the event the landlord had provided sufficient evidence.

Residential Tenancy Branch
Ministry of Housing and Social Development

With regard to the landlords claim for a Monetary Order for unpaid rent or utilities; I find the tenants were unable to move into the rental unit on March 23, 2010 as agreed, due to the landlords' belongings remaining in the unit and due to the level of cleaning and painting that had to be done. Therefore, I accept the tenant's evidence that they did not move into the rental unit until April 01, 2010 and consequently I find they do not owe rent or utilities to the landlord for this period. With regard to unpaid utilities for the remainder of the landlords claim; I find the tenants have provided a signed copy of the utility bill for this period on which the landlord has stated that the bill was paid on September 16, 2010. Consequently, I find the tenants do not owe utilities to the landlord and this section of her claim is dismissed.

With regard to the landlords claim for storage and parking, I find she has presented no evidence to show that a verbal agreement was not in place concerning storage space in the attic and she allowed the tenants to use this space for a period of time. I also find the tenants have now removed their belongings from this area on her request. I also find the tenancy agreement allows the tenants parking space and this is the space they have used for their trailer. The agreement does not specify what the tenants can and cannot park in this area. Consequently this section of the landlords claim is dismissed.

As the landlord has been unsuccessful with her claim I find she must bear the cost of filing her own application.

With regard to the tenants claim for compensation for loss of earning and stress section 67 of the Act states:

Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

With this in mind the burden of proof falls on the claimant to provided evidence of how much time was taken from work and the claimant's hourly rate. The claimant would also have to provide some documentation such as a letter from a medical professional concerning stress. As



Dispute Resolution Services

Page: 8

Residential Tenancy Branch
Ministry of Housing and Social Development

this evidence has not been provided by the tenants it is my decision that they have not meet the burden of proof in this matter and their claim for compensation is dismissed.

Conclusion

The tenant's application to cancel the One Month Notices to End Tenancy is allowed. The one Month Notices to End Tenancy for Cause dated August 01 and August 31, 2010 are cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notices, they is entitled to recover her **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord pursuant to section 72(1) of the Act.

The remainder of the tenant's application is dismissed without leave to reapply

The landlord application is dismissed in its entirety without leave to reapply.

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: September 22, 2010.

Dispute Resolution Officer