

Decision

OPR, MNR, CNR,

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to Section 55 and a monetary order for rent owed, pursuant to Section 67. The tenant applied for an order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Has the Landlord established monetary entitlement to compensation for rent still outstanding?
- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

Preliminary Issue

The application was submitted by a person purporting to be the owner and who stated that she was also occupying of the upper portion of building with the rental unit with the tenants residing in the basement suite. However, a second individual appeared stating that he was also the owner of the building and it was established that he was the estranged spouse of the applicant and he had signed the tenancy agreement with the tenants as landlord. The applicant questioned the second individual's authority to participate in the proceedings as the landlord of the subject property.

Section 1 of the Act contains a definition of "landlord" and this includes any of the following:

- the owner of the rental unit, the owner's agent or one who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act or agreement;
- the heirs, assigns, personal representatives and successors in title to a person referred to above
- a person, other than a tenant occupying the rental unit, who (i) is entitled to possession of the rental unit, and (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- a former landlord, when the context requires this;

Section 64(3) of the Act states that the dispute resolution officer may: (a) deal with any procedural issue that arises; (b) make interim or temporary orders, and; (c) amend an application for dispute resolution or permit it to be amended.

Given the above, I find that the both the applicant and the second participant are current landlords in this tenancy relationship and I hereby amend the application to include the estranged spouse as a second landlord.

Background and Evidence

Based on the testimony of both parties, I find that the tenancy started in January 2010 with rent set at \$500.00 and no security deposit was paid. The use of laundry facilities was included in the rent. A copy of the tenancy agreement was in evidence. The two landlords, one of whom still lives in the upper unit of the building, are a married couple who have separated and the property matter is now before the Supreme Court.

One landlord testified that the respondent tenants failed to pay rent. However the second landlord stated that all of the rent was paid to him in full.

On behalf of the tenants, testimony was also given alleging that the resident landlord had been harassing the tenants by denying services and facilities including withholding heat and interfering with access to the laundry facilities.

The applicant landlord denied harassing the tenants and said that they were bothering her. The landlord testified there was no need for tenants to access the common laundry.

Analysis

I find that the status of the landlord's marriage situation has no bearing regarding the rights and obligations of these tenants or landlords under the Residential Tenancy Act.

Based on the testimony and evidence of both parties, I find that the landlord has failed to prove and justify the alleged rental arrears upon which the Ten-Day Notice to End Tenancy was based. Therefore I find that the Notice must be cancelled. The landlord's application is dismissed and the Notice dated September 16, 2010 is cancelled.

In regards to the tenant's and landlord's concerns about the use of the laundry facilities under the tenancy agreement, I find that section 27 of the Act states that if a service or facility, is not essential to the tenancy, it may be restricted or terminated provided that landlord gives 30 days' written notice, in the approved form and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement.

Given the issues of concern and pursuant to section 27 of the Act, I find that that this tenancy agreement should now contain an enforceable term stating that the use of laundry facilities is *not* included in rent and the monthly rental rate shown in the agreement must be reduced from \$500.00 per month to \$400.00 per month reflecting the above loss of services and facilities.

Based on the other matters that arose in the course of this dispute, and based on the parties' concurrence, I order that all communications between these parties in regards to tenancy matters be in written form. The tenants are required to send a copy of any inquiry, complaint or notification to each of the two landlords.

Conclusion

I hereby order that the Ten-Day Notice to End Tenancy for Unpaid Rent dated January 16, 2009 is cancelled and of no force nor effect.

I order that terms of the tenancy between these two parties will now include a term that states that the use of laundry facilities is not included in rent and I order that the rental rate for the unit is now set at \$400.00 per month.

I order that all communications in regards to any tenancy matters be done in writing and served on both landlords or the tenants as applicable

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*.