



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant - CNC, MNDC, RR

For the landlord – OPR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek to cancel the a One Month Notice to End Tenancy for cause, they seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and seek to reduce their rent for repairs, services or facilities agreed upon but not provided. The landlords seek an Order of Possession for unpaid rent and to recover their filing fee.

The tenants served the landlords in person on September 16, 2010 with a copy of the application and a Notice of the Hearing. The landlords served the tenants in person on September 20, 2010 with a copy of the Application and Notice of Hearing. I find 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:



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Preliminary Issues

The tenants have applied to cancel a One Month Notice to End Tenancy for cause; however both Parties agree that a One Month Notice was not issued to the tenant. The tenant states she has cause as the landlords have failed to make repairs. I explained to the tenant that she cannot seek to cancel a Notice that has not been issued to her. Consequently as No One Month Notice has been issued to the tenant this section of the tenants claim has not been dealt with at this hearing and is dismissed.

Issues(s) to be Decide

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?
- Are the landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

Both parties agree that this month to month tenancy started on August 01, 2007. Rent for this unit is \$575.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$235.00 on August 01, 2007.

The landlord's testify that that the tenant did not pay all the rent that was due on September 01, 2010. The landlords state that they received half the rent from welfare for the tenant of \$287.50 but the tenant did not pay the balance owed of \$287.50. A 10 Day Notice to End Tenancy was served to the tenant in person on September 07, 2010. This Notice states the tenant owes outstanding rent of \$287.50 and she has five days to



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pay the outstanding rent or dispute the Notice or the tenancy will end on September 17, 2010.

The landlord states that sometime between September 21 and the 28, 2010 they received a rent payment from welfare for the tenants rent for October, 2010 of \$287.50. The tenant failed to pay her share of rent for October, 2010.

The landlords seek an Order of Possession for unpaid rent to take effect as soon as possible. The landlords also seek to recover their filing fee of \$50.00.

The tenant attending disputes the landlords claims. The tenant agrees that she did not pay the balance of her rent for September, 2010 of \$287.50 or for October of \$287.50. The tenant states she withheld her rent as the landlords had failed to make repairs to her deck. She claims the deck was so rotten she fell through it, The tenant also claims she had mould in her unit which came from the next door unit because the landlords failed to repair a leak. The tenant states that she sent the landlord a letter concerning the deck and they have now repaired this.

The tenant states she originally rented a trailer from the landlords and when this was sold at the end of May, 2007 the landlords told her she could move into this rental unit. The tenant states the tenant living there at the time overhauled her tenancy and would not move out for June 01, 2007 and prevented her from moving in. The tenant claims she had to move into a motel and has provided receipts for this cost to the total sum of \$1,558.05. The tenant states she was not able to move into her rental unit until August 01, 2007.

The landlords dispute the tenant's claims that their tenancy was due to start on June 01, 2007. The landlords state the tenant residing in the unit at that time still had a tenancy

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until the end of July, 2007. The landlords have provided a copy of the tenancy agreement with this tenant which shows that her tenancy started on August 01, 2007 not June 01, 2007 as suggested by the tenant.

The tenant seeks the sum of \$4,958.05 from the landlords for motel costs, and for living without repairs being made to her unit. At this point in the hearing the tenant refused to answer any questions, she became very angry and left the conference call.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 26(1) of the *Act* states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The tenant attending stated she had withheld her rent because of repairs. I therefore find the tenant is in breach of section 26 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

It is my decision that as the tenant left the conference call before the hearing was concluded she has failed to fully present her evidence to determine the merits of her application. The line was held open for another 10 minutes after the tenant left the call

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but the tenant did not dial back into the hearing. Consequently, I find the tenant has not presented sufficient evidence to support her claim for a Monetary Order for money owed or compensation for damage or loss and to reduce her rent for repairs, services or facilities agreed upon but not provided and her application is dismissed without leave to reapply.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days after service** on the tenant. 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 landlords are entitled to be reimbursed for the **\$50.00** cost of filing this application. I ORDER that the landlords retain this amount from the security deposit and accrued interest of \$240.03 leaving a balance \$190.03 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

The tenant's 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: October 21, 2010.

Dispute Resolution Officer