



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, MNR, MNDC, ERP, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord is seeking an order of possession and a monetary order. The tenants are seeking a monetary order and order to have the landlord complete emergency and other repairs.

The hearing was conducted via teleconference and was attended by the tenants and their advocate and the landlord.

The landlord testified that he had submitted evidence to the Residential Tenancy Branch on November 3, 2010 via fax and that he served the same evidence to the tenants by registered mail. That evidence was not provided in the file at the time of the hearing.

As the tenants did not dispute receipt of the landlord's evidence, I ordered the landlord to provide his evidence by fax immediately after the closure of the hearing. The landlord did provide the evidence in accordance with my order.

Issues(s) to be Decided

The issues to be decided are whether the landlord is 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)*.

In addition it must be decided if the tenants are entitled to an order requiring the landlord to make emergency and other repairs; to a monetary order for compensation for loss or damage under the *Act*, regulation or tenancy agreement, pursuant to Sections ,32, 33, 46, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on October 28, 2009 as a month to month tenancy for a monthly rent of \$1,350.00 due on the 1st of the month with a security deposit of \$675.00 and a pet damage deposit of \$675.00 paid on October 28, 2010.

The landlord testified that he had attempted to collect rent from the tenant but that she stated she couldn't get it on the 1st and asked him to return at 6:00 p.m. The landlord testified that he other commitments at that time and so he attempted to collect it in the morning of October 2, 2010

The landlord testified the tenant told him to comeback at 6:00 p.m. The landlord told her he would return at 1:00 p.m., as he had other commitments again at 6:00 p.m. The tenant said that she called her advocate who took time off work to be there for 1:00 p.m. but the landlord did not return until 3:00 p.m.

The landlord returned at 3:00 p.m. and the tenant refused to pay the landlord and would not accept a 10 Day Notice to End Tenancy that was dated September 2, 2010 with an effective vacancy date of October 12, 2010 due to unpaid rent in the amount of \$750.00.

The tenant testified that the landlord came back at 6:00 p.m. and refused to accept the rent. The tenants also noted that the landlord gave them a typewritten document telling them they would have to leave and that they were talking about how it was not a legal Notice to End Tenancy but that the landlord must have overheard them and returned later with the 10 Day Notice.

Both parties confirmed that the current arrears include \$750.00 from October 2010 and \$1,350.00 from November 2010.

As to the tenants' claim for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$7,650.00 based on 5 months of rent since they identified the problems to the landlord and moving expenses, the tenants submitted a copy of the note they provided to the landlord.

The landlord testified that he repair the front window; tried to repair the dishwasher and when he couldn't he purchased a replacement; he further noted he removed the garbage and compost; repaired the toilet and provided the male tenant with paint and the tenant indicated they would take care of the mold in the basement closet.

The tenants stated that the landlord did not repair the locks on the windows; the garbage was not removed until the city received complaints, including ones made by the tenants; the toilet seat is too small for the toilet and that male tenant told the landlord that he needed to tear down the drywall and remove, then bleach the walls, paint and rebuild.

The landlord testified that he was unaware there was a continuing mold problem until he received the tenants' Application for Dispute Resolution. He further testified that the tenants had arranged for an electrical inspector and a restoration specialist to come and inspect the rental unit. He stated that he gave permission to both to inspect the unit.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if on the day after rent is due under the tenancy agreement the tenant fails to pay the rent in full by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Despite the obvious animosity between the parties, Section 26 states a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or tenancy agreement.

While the female tenant testified that she refused to deal with the landlord and required her advocate to be present to hand over the rent, I am not satisfied that her advocate's presence was required or that it should impact the tenant's ability to provide the landlord with the rent money.

The landlord provided the tenant with additional time to go to the bank and get the rent money on October 1, 2010 despite the fact that it was a Friday and there was no reason the tenant could not have it available when the landlord first contacted her on the October 1, 2010.

As to the tenants' assertions that the landlord refused to accept the rent, I find, based on the balance of probabilities and in the face of contradictory testimony, it is unlikely the landlord would refuse to accept rent, when he had made several attempts to collect it.

As a result I find the landlord's 10 Day Notice to End Tenancy to be effective and enforceable.

As to the tenants claim for compensation, in order to be successful the party making such a claim must provide sufficient evidence to establish *all* of the following 4 points:

1. That a loss or damage exists;
2. That that loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of that loss; and
4. The steps taken to mitigate the loss.

As the tenants have provided no evidence of the conditions of the rental unit and as the landlord has provided documentation and undisputed testimony that he made the repairs requested, with the possible exception of the mold abatement, I find the tenants have suffered no loss that results from a violation of the *Act*, regulation or tenancy agreement.

I note the mold may be an exception in that I accept that the landlord had provided the tenants with the ability to contain the mold and he did not hear any concerns raised after this until he received notification of the tenants' claim. As such, I find the landlord was not given the opportunity to address the matter any further.

Conclusion

For the reasons noted above, I dismiss the tenant's application in its entirety.

I find that the landlord is 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 grant a monetary order in the amount of **\$2,150.00** comprised of \$2,100.00 rent owed and the \$50.00 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: November 05, 2010.

Dispute Resolution Officer