



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MNR, MNSD, OPB, OPR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for an Order of Possession based on a 10 day Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$2600.00, and a request that the respondents bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

Background and Evidence

The applicants testified that:

- The tenants had not paid rent for the months of October and November, and therefore a 10 day Notice to End Tenancy was served on the tenants on November 5, 2010.
- To date the tenants have still failed to pay the rent for the months of October November.



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- They did agree to a rent reduction of \$300.00 per month for the months of October 2010 and tenant November 2010, and therefore they are now only asking for \$2000.00 in outstanding rent.

The applicants therefore request an Order of Possession for December 15, 2010, request an order for the \$2000.00 outstanding rent plus the \$50.00 filing fee and request an order allowing them to keep the full \$1000.00 security deposit towards this claim.

The respondent's testified that:

- They were negotiating with the landlords for rent reduction due to the fact that the heating system was not functioning.
- The landlords had agreed to give them a rent reduction of \$300.00 per month however they were not satisfied with that amount and therefore attempted to negotiate further with the landlords.
- The landlords refused to negotiate further and told him they would have to get out.
- Since the landlords refused to negotiate they decided to withhold the full rent for the months of October 2010 and November 2010.

The respondents therefore believe that since the landlords would not negotiate further they should not have to pay his outstanding rent until the heating matter is resolved.

Analysis

Tenants do not have the right to unilaterally withhold the rent and if they do so they run the risk of being served a Notice to End Tenancy, which is what happened in this case.

On November 5, 2010 the landlords personally served the tenants with a 10 day Notice to End Tenancy for non-payment of rent.



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When the tenants receive a 10 day Notice to End Tenancy for non-payment of rent they can accept the notice and move, they can pay the outstanding rent within five days and thereby void the notice, or they can apply for dispute resolution and request that the Notice to End Tenancy be cancelled.

In this case the tenants did none of the above, and therefore they are deemed to have accepted the end of the tenancy, and should have vacated the rental unit on November 15, 2010.

Therefore since the tenants did not vacate the rental unit as required and did not pay the outstanding rent, the landlords have a right to an Order of Possession and to an order for the outstanding rent plus the filing fee.

Conclusion

I have issued an Order of Possession to the landlords for December 15, 2010.

I also allow the landlords claim for \$2000.00 in outstanding rent and I therefore order that the landlords may retain the full security deposit of \$1000.00 towards the claim and I have issued a monetary order for the difference of \$1000.00.

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: December 07, 2010.

Dispute Resolution Officer