



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNR, MNDC, RP, FF

Introduction

This hearing dealt with the tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for a Monetary Order for emergency repairs and for damage or loss under the Act, regulations or tenancy agreement; for Orders for repairs and recovery of the filing fee. The male co-tenant appeared at the hearing and stated he was representing both named co-tenants. The landlord also appeared at the hearing and confirmed service of hearing documents upon her. Both parties were provided the opportunity to be heard and to respond to submissions of the other party.

The tenant requested an adjournment of the hearing on the basis the female co-tenant was not available for the hearing because she had to work and on the basis the tenants' evidence of the condition of the rental unit was in digital format. The tenant explained that the female co-tenant had more knowledgeable of the rent owed to the landlord than he did. I noted that the tenants had not made a written submission with respect their purported calculation of rent owed dispute having the opportunity to do so in the days that preceded this hearing. I noted the tenants had not submitted any receipts with respect to repairs or emergency repairs made by the tenants. Further, parties are permitted to provide photographs as evidence for a hearing yet the tenants chose not to do so despite making this application approximately three weeks prior to the hearing. For these reasons, I denied the tenant's request for an adjournment.

During the hearing the parties reached a mutual agreement to resolve this dispute.

Issues(s) to be Decided

What are the terms of the mutual agreement?

Are the tenants entitled to monetary compensation from the landlord?

Is it necessary to issue repair Orders to the landlord.

Background and Evidence

The parties provided undisputed testimony as follows. The tenancy commenced approximately five years ago with the female tenant and the landlord. A \$750.00 security deposit was paid to the landlord. The monthly rent is currently set at \$1,575.00 due on the 1st day of every month and the tenancy agreement provides that the tenants must pay a late fee of \$25.00 if rent is late. On November 7, 2010 the landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates that \$9,950.00 was outstanding as of November 2, 2010. The tenants paid \$1,500.00 of the outstanding rent at the end of November 2010. The tenants have not paid rent for the month of December 2010 and continue to reside in the rental unit.

The tenants testified that he made an emergency repair which involved removing a fallen tree from the street and front yard of the residential property. The tenant did not submit any receipts or invoices to substantiate the claim for compensation for emergency repairs or damages or loss under the Act, regulations or tenancy agreement.

After discussion of the tenants' obligations to pay rent as provided under section 26 of the Act and the definition of emergency repairs as defined by section 33 of the Act the parties mutually agreed to the following terms.

1. On or before January 15, 2011 the tenants will pay the landlord the sum of \$11,625.00 to satisfy the amount owed to the landlord for outstanding rental arrears, the rent and late fee owed for December 2010, and the rent for January 2011.
2. If the tenants fulfill the above term, the tenancy shall continue.
3. If the tenants do not fulfill term no. 1 above, the tenancy shall end and the tenants shall be required to vacate the rental unit by January 15, 2011.

Provided a documentary evidence for this hearing was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent.

Analysis

I accept the mutual agreement reached between the parties and Order that the terms be binding upon both parties. In recognition of the mutual agreement I provide the landlord with an Order of Possession effective January 15, 2011 and a Monetary Order in the amount of \$11,625.00 to enforce if the tenants do not fulfill term no. 1 of the mutual agreement recorded in this decision. In the event the tenants fulfill term no. 1 of the mutual agreement the Orders are not enforceable in court.

As tree removal from the street and front yard does not constitute an emergency repair, as defined by section 33 of the Act, I do not award the tenants compensation for this action. As the tenants failed to establish that they incurred any damage or loss under the Act, regulations or tenancy agreement I dismiss the tenants' claim for other compensation.

As I was not provided with sufficient evidence pertaining to the condition of the rental unit and because the continuation of this tenancy is contingent upon the tenants fulfilling term no. 1 of the mutual agreement, I dismiss the tenants' request for repair Orders with leave to reapply.

I do not grant the tenants' request to recover the filing fee paid for this application.

Conclusion

The parties reached a mutual agreement during this hearing with respect to payment of rent and continuation of the tenancy. The landlord has been provided an Order of Possession and Monetary Order to enforce in the appropriate court after January 15, 2011 as necessary.

The tenants' requests for compensation have been dismissed. The tenants request for repair Orders has been dismissed with leave to reapply in the event the tenancy continues after January 15, 2011.

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