



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authority to retain the security deposit, and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing I determined the tenants have vacated the rental unit and an Order of Possession is no longer required. I also determined that the landlord's monetary claim included an anticipated loss of rent for January 2011 and I dismissed that portion of the application with leave to reapply.

I have amended the application to correctly identify the female tenant as I determined that the landlord had erroneously reversed the tenant's first and last names in making the application.

Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent for December 2010?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties provided undisputed evidence as follows. The one-year fixed term tenancy commenced July 1, 2010 and the tenants paid a \$750.00 security deposit. The tenants were required to pay rent of \$1,475.00 on the 1st day of every month. The tenants did not pay rent for December 2010 and were served with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants vacated the rental unit on December 11, 2010.

With this application, the landlord has requested compensation of \$1,475.00 for unpaid rent for the month of December 2010.

The tenants were of the position they owe rent for the 11 days they occupied the rental unit in December 2010. The tenants submitted that the landlord failed to comply with a material term of the tenancy agreement with respect to installing a fence and breached their right to quiet enjoyment. The tenants gave the landlord a notice to end tenancy via email sent December 1, 2010 and by posting it on the landlord's door on December 2,

2010. The tenant's notice had an effective date of December 31, 2010. Upon receiving the 10 Day Notice the tenants vacated the rental unit in compliance with the 10 Day Notice.

The landlord responded to the tenants' submissions by stating the installation of a fence was not a material term of the tenancy agreement. The landlord denied breaching the tenants' right to quiet enjoyment.

Documentary evidence considered in making this decision includes the written submissions of both parties, the tenancy agreement, 10 Day Notice to End Tenancy issued December 2, 2010 and numerous emails between the parties.

Analysis

Section 26(1) of the Act provides as follows:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, it is undisputed that the tenancy agreement required the tenants to pay rent of \$1,475.00 on December 1, 2010 and the tenants did not comply with this term.

At issue is whether the tenants had a right under the Act to deduct any amount from the rent otherwise payable December 1, 2010. As explained to the parties during the hearing, a right to withhold rent may come from consent by the landlord, authorization from a Dispute Resolution Officer or another specific provision of the Act. In this case, the tenants did not have the landlord's permission or the authority of a dispute resolution officer to withhold rent.

Specific provisions of the Act that provide for deductions from rent include overpayment of rent, overpayment of a security deposit or emergency repairs made by the tenant. As security deposits are limited to one-half of the monthly rent, I find the tenants did overpay the security deposit by \$12.50 at the commencement of the tenancy and that overpayment was deductible from rent otherwise payable. I can find no other provision in the Act that would permit the tenants to deduct or withhold rent for the month of December 2010.

With respect to the tenants' submissions I find as follows. A breach of material term of a tenancy agreement by the landlord does not in itself entitle the tenants to withhold rent. Rather, the tenants' remedy was to make an Application for Dispute Resolution seeking orders for compliance against the landlord and/or a Monetary Order against the

landlord and/or authority to reduce future rent payable. Alternatively, section 45 of the Act provides that tenants may give written notice of the breach to the landlord and if the landlord does not correct the situation within a reasonable period of time the tenants may end the tenancy.

Upon review of the tenancy agreement I find the agreement does not reflect a term with respect to installation of a fence by either party. From the email evidence before me, I find the parties began discussions regarding a fence on September 2, 2010. On that date it was the tenant suggesting the tenants put up a temporary fence and discussions ensued with respect to installation of a fence. However, I do not find the landlord was obligated to install a fence as a material term of the tenancy agreement.

While the courts have found that a tenant's right to quiet enjoyment is a material term of a tenancy agreement, I do not find the tenants established that the landlord breached this covenant in any significant way. To find a breach of quiet enjoyment the tenants have to show that the landlord is responsible for causing a substantial interference with the tenant's ordinary and lawful enjoyment of the rental property. Temporary discomfort or inconvenience is not a basis to find breach of quiet enjoyment.

In the tenants' written submission the tenants point to a neighbour across the street watching the tenants and that the landlord always seemed to know what was going on at the rental unit. The tenants also point to another neighbour cutting through the rental property in order to cut the neighbour's grass; however, the tenants' submissions also indicate that there was a disagreement about the property lines and common property. I do not find these submissions indicative of substantial interference by the landlord.

In light of the above, I find the tenants were obligated to pay the full amount of rent for the month of December 2010, less the overpaid security deposit of \$12.50. I find the tenancy ended for the tenants' failure to pay rent for December 2010 and not due to a breach of a material term of the tenancy agreement by the landlord.

As the tenants were informed during the hearing, the tenants are at liberty to make an Application for Dispute Resolution seeking compensation from the landlord if they are of the position the landlord violated the Act, regulations or tenancy agreement and such a violation caused them to suffer damages or loss.

I award the landlord the filing fee paid for this application and authorize the landlord to retain the security deposit in partial satisfaction of the rent owed to the landlord. The landlord is provided with a Monetary Order in the amount of \$755.00 to serve upon the tenants. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

The tenants have vacated and an Order of Possession is no longer required. The landlord has been authorized to retain the security deposit and the landlord has been provided a Monetary Order for the balance of \$755.00 to serve upon the tenants. The landlord's claim for loss of rent for January 2011 was dismissed with 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: December 31, 2010.

Residential Tenancy Branch