



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR, OLC, RP, RR, O, OPR, MNR, MNSD, MNDC, FF

Introduction

This was the hearing of applications by the tenants and by the landlord. The tenants applied to cancel a Notice to End Tenancy for unpaid rent. They also requested an order that the landlord comply with the Act, a rent reduction and repair orders. The landlord applied for an order for possession and a monetary order for unpaid rent

Issues(s) to be Decided

Should the Notice to End Tenancy for unpaid rent dated November 4, 2010 be set aside?

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in a house. There is a second basement suite and an upstairs suite in the rental property. The tenancy began on May 26, 2010. Monthly rent in the amount of \$550.00 was payable on the first of each month. According to the tenancy agreement the tenants were to pay 30% of the hydro, gas and cable utilities. The landlord testified that the tenant was credited with a security deposit of \$150.00 on account of work that he performed to the rental property at the request of the landlord.

The landlord testified that the tenants did not pay the rent for November. The tenant said the rent would be paid on November 3rd. When it was not paid the landlord served

the tenants with a 10 day Notice to End Tenancy on November 4, 2010 by posting it to the door of the rental unit. The tenants acknowledged receiving the Notice on November 5, 2010. The tenant acknowledged that the rent has not been paid for November or December, 2010. The tenant suggested that the landlord wanted to have them move out so he could move into the rental unit and that is why he did not pay the rent. He also complained that there was no heat provided and that the rental unit was closed by the municipality. The landlord denied this accusation. The tenant did not produce evidence that supported his statement. The tenant said that the central heating did not work and the landlord supplied only one inadequate baseboard heater. The tenant requested repair orders and a rent reduction but he provided no evidence to show that he ever requested repairs or made any complaints to the landlord about the lack of heat before he was served with the Notice to End Tenancy.

The landlord testified that heat for the rental property is supplied by a hot water heating system with a gas fired boiler. He said that the boiler was not working for safety reasons until December, 2010, but it now supplies heat to all units. The landlord said that there are electrical baseboard heaters in the rental unit and a gas fired fireplace that the tenants can use for heat. The tenant insisted that there was only one baseboard heater and no hot water heat.

The landlord claimed that the tenants have not paid their share of utilities. The landlord submitted one of two pages of a hydro bill for the period September 25 to November 25, 2010. The page submitted contained handwriting and calculations written in the margin. The landlord submitted a copy of a Terasen Gas bill with a due date of June 17, 2010 and billing date of May 26, 2010. He submitted a second Terasen Gas bill with a billing date of November 25, 2010.

Analysis and conclusion

The tenant acknowledged that rent has not been paid for November and December. The tenant did not suggest that he had a valid reason to withhold the rent. The

Residential Tenancy Act provides that a tenant may only withhold rent when the tenant has applied for and received an order authorizing him to do so or where the tenant has had to pay for emergency repairs to the rental unit and the landlord has not reimbursed the tenant for the expenditures. Neither of these exceptions applies in this case. I decline to set aside the 10 day Notice to End Tenancy for unpaid rent. The effective date of the Notice to End Tenancy has passed and I find that the landlord is entitled to an order for possession effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord claimed a monetary order in the amount of \$1,350.00 for unpaid rent and utilities. The evidence the landlord provided with respect to amounts claimed for utilities was indecipherable. Upon a review of the landlord's documents I am unable to make sense of the landlord's calculations scrawled in the margin of the Hydro account. The landlord did not provide evidence that he gave the tenants a written demand for payment of a particular amount for utilities and I dismiss the landlord's claim for unpaid utilities without leave to reapply. I award the landlord the sum of \$550.00 as unpaid rent for November and I award the landlord loss of revenue for the first two weeks of December in the amount of \$225.00 for a total of \$775.00. I set off against that amount the earned security deposit of \$150.00 for a net award of \$625.00. The landlord is entitled to recover the \$50.00 filing fee for his application and I grant the landlords an order under section 67 in the amount of \$675.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Because the tenancy has ended the tenants' claims for repairs, a rent reduction and an order that the landlord comply with the Act, Regulation or tenancy agreement are dismissed without leave to reapply.

Dated: December 07, 2010.
