



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, RR, MNR, MNSD, OPR, OPB, FF

Introduction

A substantial amount of documentary evidence, photo 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.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Tenants application

First of all it is my decision that I will not deal with all the issues that the tenants have put on their application. For claims to be combined on an application they must related.

Not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel two Notices to End Tenancy and I dismiss the monetary claim with liberty to re-apply.

Landlords application

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent and a request for a monetary order in the amount of \$3078.75. The landlords are also requesting an order allowing them to keep the full security deposit towards this claim.

Background and Evidence

The landlord's lawyer testified that:

- The tenants failed to pay \$270.00 of the November 2010 rent and therefore a 10 day Notice to End Tenancy for non-payment of rent was issued.
- The tenants also failed to pay the \$1050.00 December 2010 rent and therefore another 10 day Notice to End Tenancy for non-payment of rent was issued.
- Both of the 10 day notices to end tenancy were posted on the tenant's door on December 17, 2010.
- To date the tenants have failed to pay that outstanding rent, and now the full January 2011 rent is also outstanding.

The landlords are therefore requesting an Order of Possession for as soon as possible, and are requesting a monetary order as follows:

November 2010 rent outstanding	\$270.00
January 2010 rent outstanding	\$1050.00
Bank charges for cheques that were not honoured for November and December rent	\$10.00
Outstanding utilities for 2010	\$43.75
Outstanding utilities for 2011	\$41.97
Bank charge for stop payment on January rent cheques	\$5.00
Filing fee	\$50.00
Total	\$2520.72

The landlords therefore request an order allowing them to keep the full security deposit of \$525.00 and request that a monetary order be issued for the \$1995.72 difference.

The tenants testified that:

- They withheld their rent on the advice of the Residential Tenancy Branch, who said they did not have to pay their rent if the rental unit was not presented to them in proper condition.
- They had to do extensive cleaning when they moved into the rental unit and therefore believe they had the right to withhold money for cleaning and utilities.
- They did not get the landlords permission to withhold the rent nor did they apply for dispute resolution before withholding the rent, they just withheld it themselves after speaking to someone at the Residential Tenancy Branch.

The tenants therefore believe that the Notice to End Tenancy should be cancelled.

Analysis

The tenants did not have the right to withhold the rent without getting either permission from the landlord to do so, or an order from a dispute resolution officer allowing them to withhold the rent.

The tenants claim that the Residential Tenancy Branch advised them to withhold the rent; however I find that very unlikely as that is not advice that the Residential Tenancy Branch would give.

Therefore since the tenants did not have the right to withhold the rent, the two notices to end tenancy issued by the landlords are valid notices and I will not set them aside, and will be issuing an Order of Possession to the landlords.

Further since the tenants did not have the right to withhold rent or utilities, I allow the full amount claimed by the landlord for outstanding rent and utilities.

I also allow the claims for Bank charges that resulted from cheques there were issued when there were insufficient funds in the account, and for cheques that had stop payments orders issued against them.

I also allow the landlords claim for the filing fee.

Conclusion

Tenant's application

The tenant's application to have the two Notices to End Tenancy cancelled is dismissed in full without leave to reapply, and I order that the tenants bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

Landlords application

I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have allowed the landlords full claim of \$2520.72, and I therefore order that the landlords may retain the full security deposit of \$525.00 and have issued a monetary order in the amount of \$1995.72.

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: January 18, 2011.

Residential Tenancy Branch