



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, CNR, FF, MNR, OPR

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 the application. For claims to be combined on an application they must related.

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

I therefore will deal with the requests to cancel the 2 Notices to End Tenancy and I dismiss the monetary claim with liberty to re-apply.

Landlords application

The landlord's application is a request for an Order of Possession based on a 10 day Notice to End Tenancy for non-payment of rent, and a request for a monetary order for \$2200.00.

Background and Evidence

The landlord has served the tenant 3 Notices to End Tenancy as follows:

- January 1, 2011 the landlord served a 10 day Notice to End Tenancy for non-payment of January 2011 rent. (This is not a valid Notice to End Tenancy, because rent was due on the 1st and therefore the Notice to End Tenancy for non-payment of rent cannot be served until the 2nd of the month)
- January 1, 2011 the landlord served the tenant with a one month Notice to End Tenancy for repeated late rent payments.
- January 12, 2011 the landlord served a second 10 day Notice to End Tenancy for non-payment of January 2011 rent.

I will deal first with the January 12, 2011 Notice to End Tenancy for non-payment of rent.

The landlords testified that:

- The tenants failed to pay the January 2011 rent in the amount of \$2150.00.
- After realizing that the notice they served on January 1, 2011 was not a valid notice, they served the notice dated January 12, 2011.
- To date the tenant has not paid any of the outstanding January 2011 rent and has not vacated the rental unit.

The landlords are therefore requesting an Order of Possession for as soon as possible, and an order for the outstanding rent, plus their filing fee.

The tenants testified that:

- They withheld the rent because the landlord was supposed to reduce the rent by one half for the month of January 2011 and was supposed to have reimburse them one half a month's rent for the month of November 2011.
- They had also had to rent a heater at a cost of \$89.60, which the landlord agreed to reimburse, and they also had extra electricity costs totalling \$493.90, due to the sewage backup and the extra electricity used for the cleanup.
- Therefore since the landlord failed to reimburse any rent for the month of November 2011, or the cost of the heater and electricity, they withheld that money from the January 2011 rent.

The tenants therefore believe that there is no rent owed for the month of January 2011 and requested the Notice to End Tenancy be cancelled.

In response to the tenant's testimony the landlords testified that:

- They never agreed to reimburse the tenant one half a month's rent for the month of November 2011.
- They never agreed to pay the tenant's claimed excess electrical costs.
- They did agree to reimburse the tenants \$89.60 for the heater they rented.
- They also never agreed to reduced the rent by half for the month of January 2011, he did tell the tenants that he would speak to the owners to see if they would agree to a rent reduction, but they did not agree, and therefore he informed the tenants there would be no rent reduction for January 2011.

Therefore the tenants should have paid the full January 2011 rent less the \$89.60.

Analysis

It is my decision that the tenants did not have the right to withhold the rent for the month of January 2011.

The tenants believe that they should be reimbursed for one half months rent for the month of November 2010, and that the January 2011 rent should be reduced by half; however no agreement has ever been finalized with the landlords for a rent reduction for January 2011 or for the reimbursement of any rent for November 2010.

Therefore in the absence of an agreement with the landlords, the tenants did not have the right to unilaterally withhold the rent.

If the tenants believe that they have a valid monetary claim against the landlords, they should have first paid their rent and then filed a claim against the landlord, because by withholding their rent without first getting an order from a dispute resolution officer allowing them to do so, they put their tenancy at risk.

Therefore it is my finding that the full January 2011 rent of \$2150.00 less the \$89.60 heater charge, for a balance of \$2060.40 is outstanding and owed to the landlords.

I therefore will not set aside the 10 day Notice to End Tenancy and this tenancy ends pursuant to that notice.

Since this tenancy is ending pursuant to the 10 day Notice to End Tenancy, there is no need to deal with the one month Notice to End Tenancy.

Conclusion

Tenants application

As stated earlier a monetary portion of the tenant's application is dismissed with leave to reapply.

The tenants request to cancel the 10 day Notice to End Tenancy is dismissed without leave to reapply. I further 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 to the landlords for 1 p.m. on January 31, 2011. I also allow \$2060.40 of the landlord's monetary claim and further order that the tenants bear the \$50.00 cost of the filing fee. I therefore issued a monetary order in the amount of \$2110.40

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 26, 2011.

Residential Tenancy Branch