



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes AAT, LAT, MNDC, MNSD, OPR, OPC, MNR, 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.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent and a Notice to End Tenancy for cause. The landlord had also requested a monetary order of \$3775.00 however at the beginning of the hearing she withdrew the monetary portion of her application as she wishes to pursue it at a later date.

The tenants application is a request for a monetary order in the amount of \$2464.00, a request for an order of for the return of the tenant's personal property, a request for an Order of Possession to the rental unit and an order allowing access to the unit by the

tenant or his guests, and request for an order authorizing the tenant to change the locks to the rental unit.

Background and Evidence

The landlord testified that:

- The tenants have not paid the full rent for the month of February 2011, and therefore a 10 day Notice to End Tenancy was served on the female tenant by hand on February 2, 2011.
- She also change the locks on the tenants door on February 2, 2011 because she found be door to the rental unit had been left open, and she did not know whether some unauthorized person may have a key.
- She left a note on the door advising the tenants to come to her suite if they needed a key.
- The female tenant did come and get a key, and removed her belongings from the rental unit, signed the move out inspection sheet, and returned the key to the landlord.
- The male has never approached her to be given a key to the rental unit. One was always available upon request.
- The tenants have not filed a dispute of the 10 day Notice to End Tenancy, and therefore she is requesting an Order of Possession based on that notice.

The tenants testified that:

- They did receive a 10 day notice for non-payment of rent; however they have paid \$100.00 of the outstanding rent and therefore only owe \$287.50.
- They would have paid the remainder of the rent however the landlord locked them out of the rental unit on February 2, 2011 and therefore they do not believe they should be paying any further rent.

- The female tenant was given a key to access the rental unit and removed her belongings however the male tenant has never been given a key and has no access to the rental unit because he is been told is not allowed on the property.
- He still has his belongings in the rental unit and has not had access to remove them.
- The landlord has accused him of stealing money from the office however no charges have been laid and he has never taken any money from the landlord's office.
- The landlord did not personally tell him he could not have access to the building; however the police did suggest that he should probably stay away from the building until this matter is resolved.
- The landlord also told his girlfriend (the female tenant), that he was not allowed in the building.
- He is therefore requesting an order that the landlord return all his personal property.
- They are also requesting a monetary order as follows:

Return of February 2011 rent	\$387.50
Return of female tenants rental payment	\$100.00
Moving costs	\$250.00
Room and board -male tenant	\$350.00
Room and board -female tenant	\$300.00
Stress, depression, inconvenience, and travel	\$500.00
Total	\$2275.00

Analysis

The tenants have been given a proper 10 day Notice to End Tenancy, and they admit that there is still rent outstanding. Therefore since the tenants have not filed a dispute of that 10 day Notice to End Tenancy and the time limit in which to file a dispute is well past, they are deemed to have accepted the end of the tenancy and therefore the landlord has the right to an Order of Possession.

The tenants have requested a monetary order and an order for return of personal property claiming that they have been locked out of the rental unit; however the male tenant has admitted that he has never asked the landlord for key to the rental unit. The landlord testified that she was always been willing to give the tenant a key had she been asked.

Therefore it is my finding that the tenant did not take reasonable steps to access the rental unit after the landlord change the locks. Further it is also my finding that the landlord's reason for changing the locks was reasonable having found the rental unit not only unlocked but with the door open.

Therefore since the tenants did not take reasonable steps to get access to the rental unit and thereby mitigate any loss I will not allow any of the tenants claims for monetary compensation. Further since the tenants belongings are not yet completely out of the rental unit I also deny the request for the return of the security deposit at this time.

Further since the landlord has stated that she is still fully willing to allow the tenants access to remove their belongings, I will issue no order for the return of the tenant's personal property.

Conclusion

Landlord's application

I have issued an Order of Possession that is enforceable two days after service on the tenants. The landlord must ensure that she gives the tenants access to the rental unit so that they can comply with that order.

Tenant's application

The tenant's application is dismissed in full without leave to reapply, except for the claim for the security deposit. The claim for the security deposit is 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: February 21, 2011.

Residential Tenancy Branch