



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order to cancel a 10 day Notice to End Tenancy for unpaid rent and to obtain a monetary order.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy be cancelled?

Are the Tenants entitled to a monetary order?

Background and Evidence

The Tenants moved into the rental unit on December 15, 2010. They pay a monthly rent of \$850.00, due on the first day of each month. According to the evidence of the Tenants there has been no heat in the rental unit since they moved in.

This is the second hearing involving the tenancy. The first occurred on February 22, 2011 (the "First Hearing").

As a result of the First Hearing a Decision was issued on February 23, 2011. In that Decision, made by a different Dispute Resolution Officer, the Landlord was ordered to

make certain repairs to the rental unit by March 7, 2011. The order included repairs to the heat in the rental unit.

The Decision from the First Hearing also included a rent abatement of \$12.50 per day starting March 7, 2011, until the heat was repaired. The Decision set out that:

“Any rent abatement will be deducted from the next month’s rent owed; for example any abatement from March will be deducted from April rent owed.”

On March 1, 2011, the Tenants did not pay the Landlord the rent that was due. On March 2, 2011, the Landlord issued the Tenants a 10 day Notice to End Tenancy for unpaid rent in the amount of \$850.00.

The Tenants testified and agreed that they had not paid the March rent. They testified that they had no evidence for the first hearing and that the Landlord did not appear at the hearing. They testified that they had submitted a package of evidence regarding the lack of heat in the rental unit for this hearing.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants have breached the Act by failing to pay rent when due and further, that the Tenants have failed to follow the order that was previously granted in their favour in the First Decision.

Therefore, as the Tenants have failed to pay rent as required under the Act and as directed in the order from the First Decision, I find that the 10 day Notice to End Tenancy is valid and should not be cancelled.

Under section 26 of the Act, the Tenants must pay rent when due whether or not the Landlord complies with the Act or tenancy agreement, unless the Tenants have a right under the Act to deduct a portion of the rent. Here the Tenants were granted an order where they could have deducted a portion of their rent, however, they failed to pay rent for March of 2011 and did not follow the terms of the order.

Having found the Tenants are in breach of the Act, and the 10 day Notice to End Tenancy should not be cancelled, I dismiss their Application for Dispute Resolution.

The Agent for the Landlord orally requested an order of possession for the rental unit. Under section 55 of the Act, I must grant that request.

I grant and issue the Landlord an order of possession for the rental unit, effective two days after service on the Tenants.

As the Tenants appear to not understand their rights and obligations under the Act, I enclose a copy of a guidebook for their use.

Lastly, I note that at the end of the hearing the female Tenant used foul and abusive language, which was directed at the Dispute Resolution Officer.

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: March 17, 2011.

Residential Tenancy Branch