



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an Order for Possession ending the tenancy for cause, for money owed for unpaid rent and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Have the Tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlord to an Order for Possession, an order for unpaid rent and to recover the filing fee?

Background and Evidence

This one year fixed term tenancy began on January 3, 2011, monthly rent is \$850.00 and a security deposit of \$500.00 was charged by the Landlord, greater than the allowable amount in contravention of Section 19 of the Act.

The Landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenants on March 2, 2011, in person, with a stated effective move out date of March 31, 2011. Under the Act, a notice under this Section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to April 30, 2011.

The Notice listed as causes that the Tenants are repeatedly late in paying rent, had caused extraordinary damage to the rental unit and have not done required repairs of damage to the rental unit.

The Landlord's relevant evidence included the tenancy agreement and an addendum, the Notice and a receipt for the February 2011, rent.

In addition to a request for an order of possession, the Landlord has also applied for a monetary order in the amount of \$1,700.00 for the March and April 2011, unpaid rent. Although the Landlord mentioned unpaid utility bills and costs for damages, he did not apply for the same and the issues were not considered.

In support of his application, the Landlord testified that the Tenants made a late payment for the February rent and that when he tried to collect the March rent, the Tenants did not have the funds available. The Landlord submitted that he has not been paid for the March 2011 rent and requested the April rent be included in the monetary order.

As to the other causes listed on the Notice, the Landlord submitted the Tenants broke the oven door, removed a door by the washroom and have yet to repair or replace those items.

In response, the Tenant denied making repeated late payments, as the Notice was issued on March 2, 2011. The Tenant testified that the Landlord agreed to allow the Tenants to pay the rent in two payments for February 2011. The Tenants further submitted that they have not paid the March 2011, rent due to the Landlord's failure to make repairs to the rental unit, as promised.

The Tenants denied breaking the oven door, but instead submitted that this was loose and barely attached when they moved in. The Tenants submitted that they have made repeated requests of the Landlord to repair this item. The Tenants denied breaking the closet door, that it was off its hinges and they were not told to not replace it.

The Tenants' evidence included faxed photographs of the condition of the rental unit and a mould inspection report and invoice.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The Landlord established that the Tenants made a late payment in February and no payment in March. Therefore I find the Landlord submitted insufficient evidence to establish that the Tenants were repeatedly late in paying rent.

Further I find the Landlord submitted insufficient evidence that the Tenants caused extraordinary damage to the rental unit and have not done required repairs of damage to the rental unit. The evidence of these causes consisted of disputed verbal testimony and I find it more likely than not that the rental unit was not in a good state of repair at the start of the tenancy.

I find the Landlord submitted insufficient evidence to prove any of the causes in the Notice to End Tenancy.

Based on these findings, I find that the 1 Month Notice to End Tenancy for Cause issued in this matter is not valid, not supported by the evidence and I order it be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the Act.

As the Landlord was partially successful with his application, I allow recovery of one half of the filing fee in the amount of \$25.00.

The April 2011, rent was not late as of the day of the hearing, so I have not considered this amount. Therefore I find that the Landlord has established a total monetary claim of **\$875.00** comprised of unpaid rent of \$850.00 and the partial filing fee of \$25.00 paid by the Landlord for this application and I grant the Landlord an order under section 67 for the amount of **\$875.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the parties seem unfamiliar with their rights and obligations under the Residential Tenancy Act, with the Landlord overcharging in a security deposit and the Tenants believing they are entitled to withhold rent based upon allegations that the Landlord has

failed to fix “problems,” I have included a guidebook to the Act for the parties to use as a reference.

Conclusion

The Landlord's 1 Month Notice to End Tenancy for Cause issued in this matter is not valid and it is cancelled.

The Landlord is granted a monetary order in the amount of \$875.00.

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: April 04, 2011.

Residential Tenancy Branch