



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants filed their Application to dispute the Notice to End Tenancy for unpaid rent given to them by the Landlord and to recover property.

The Landlord Application requested an order of possession based on unpaid rent, a monetary order for unpaid rent and utilities, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

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

Is the 10 day Notice to End Tenancy for unpaid rent or utilities valid or should it be cancelled?

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Landlord, I find that the Tenants were personally served with a 10 day Notice to End Tenancy, on May 5, 2011, for non-payment of rent.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenants applied to dispute the Notice to End Tenancy on May 24, 2011. The Tenants submit that the Notice is invalid because it is an outdated form.

The Tenants agree they have not paid \$790.00 in rent for May, \$1,250.00 in rent for June and \$590.21 in utilities up to May 5, 2011. The Tenants are also upset the Landlord is asking them to show the rental unit to prospective new renters before they have moved out. The Tenants did not make any submissions with regard to what property they need returned, and therefore, that portion of their claim is dismissed.

The Landlord alleges that the Tenants made a mess in the rental unit when he was going to show the rental unit to prospective new renters.

Analysis

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

The Tenants have not paid the outstanding rent and I find the May 2011, 10 day Notice to End Tenancy is valid. Although the form is slightly out of date, it was the prior form used for 10 day Notices. It contains all the required information of the new form, such as the rights and obligations of the Tenants under the Notice, but is slightly longer. The form also alerts the Tenants that an error on it does not automatically invalidate it. Therefore, I do not find that the Notice should be cancelled and I dismiss the Application of the Tenants.

I allow the Application of the Landlord to end the tenancy and find that pursuant to section 55 of the Act, the Landlord is entitled to an order of possession effective **at 1:00 p.m. June 30, 2011**, being the date requested by the Landlord. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$2,680.21** comprised of \$790.00 in rent for May, \$1,250.00 in rent for June, \$590.21 in utilities up to May 5, 2011, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$650.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,030.21**.

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

The Tenants are ordered to maintain the rental unit in reasonable health, cleanliness and sanitary standards, as required under section 32 of the Act, and in particular when the Landlord is showing the rental unit to prospective new renters.

The Landlord is ordered to provide the Tenants a notice to enter the rental unit in accordance with section 29 of the Act, when he wishes to show the rental unit to prospective new renters.

The Landlord's claim for the cost of a Bailiff to remove the Tenants is dismissed with leave to reapply, since this claim was made prematurely. The Landlord was advised to obtain current forms from the Branch.

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: June 16, 2011.

Residential Tenancy Branch