



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, MNDC, ERP, RP, LRE, AAT, AS, RR, FF
For the landlords: OPR, OPC, MNR, MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”), for an order suspending or setting conditions upon which the landlord may enter the rental unit, an order requiring the landlords to make repairs and emergency repairs, an order allowing the tenant to assign the tenancy or sublet the rental unit, an order for a rent reduction, allow the tenant access to the rental unit and to recover the filing fee.

The landlords applied for an Order of Possession based upon the tenant's unpaid rent, or for cause, a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act and to recover the filing fee.

The tenant and the landlords, through their interpreter, 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. Any reference to the landlords' testimony is meant to indicate testimony supplied by their interpreter.

Preliminary Issue:

The landlords have served the tenant two different Notices to End the tenancy.

The tenant's application requested an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent. The landlords' application sought an order of possession based upon alleged unpaid rent. However, the landlords amended their application, seeking an order of possession based upon alleged cause. The landlords, however, served the tenant a 1 Month Notice to End Tenancy with their amended application and Notice of Hearing package and not separately.

I accepted the landlords' amended application and service of the Notice upon the tenant. However, as a result, I amended the tenant's application to also request an order cancelling the 1 Month Notice to End Tenancy.

Issue(s) to be Decided

Has the tenant established an entitlement for orders requiring the landlords to make repairs and emergency repairs, allowing the tenant to assign the tenancy or sublet the rental unit, an order suspending or setting conditions upon which the landlord may enter the rental unit, an order allowing access to the rental unit, and an order for a rent reduction?

Has the tenant established an entitlement to have the Notices to End Tenancy cancelled?

Have the Tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the Landlord to an order for monetary relief and for an order of possession?

Background and Evidence

This two year, fixed term tenancy started on September 1, 2010, and was to run through August 30, 2012. The monthly rent is \$1,060.00 and the tenant paid a security deposit of \$530.00 on September 1, 2010.

Pursuant to the Residential Tenancy Branch rules of procedure for the Act, the landlords proceeded first in the hearing and testified as to why the tenant had been served with the Notices to End Tenancy.

The landlords testified and supplied evidence that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on June 14, 2011, listing the amount of \$258.40 in unpaid utilities, but no unpaid rent. Upon query, the landlords stated that the tenant was never given a written demand for payment of the utilities in accordance with section 46 (6) of the Act. As a result, I have determined that the 10 Day Notice was invalid and it was excluded from the proceedings for consideration.

The 1 Month Notice to End Tenancy for Cause (the "Notice") was served on the tenant via personal service on June 24, 2011, with a stated effective move out date of July 31, 2011.

Landlords' Claim:

The Notice was served on the tenant because the landlord alleges the tenant has made repeated late payments of rent, allowed an unreasonable number of occupants in the rental unit, put the Landlord's property at significant risk, has not done required repairs, has assigned or sublet the rental unit without the landlords' permission and has seriously jeopardized the health or safety or lawful right of another occupant or the landlords.

In addition to a request for an order of possession, the landlords have also applied for a monetary order in the amount of \$3,444.40, which includes unpaid water fee of \$40.00, unpaid rent/utility for July and August for \$2,180.00, damage/repair for \$218.40, and parking and storage fee for \$900.00. I note that the landlords' original application was a request for a monetary order in the amount of \$2,544.40, but their amended application changed that amount to \$3,444.40, which is similar in amount of the tenant's claim of \$3,440.00.

The landlords' relevant evidence included notices to the tenant to refrain from blocking the driveway, the tenancy agreement, the Notice, notices to the tenant concerning late payments of rent and unpaid utilities, septic tank clean-out invoice, a Sublet Agreement between the tenant and his subtenant, and receipts for rent. I note that one receipt indicated a payment of rent and water fee for the month of July.

Landlords' relevant testimony included:

The tenant was late paying rent in October and December 2010, and in February, May and June 2011.

The tenant has moved out and has sublet the rental unit without permission.

The toilet and septic system were in good working order when the tenant moved in, but that the septic tank had to be repaired and cleaned due to the misuse by the tenant or his occupants in causing too much paper to be flushed. Due to the tenant's misuse, the tenant is responsible for the landlords' repair bill of \$218.40.

The tenant is only bringing forth issues now in his application as he has already sublet the rental unit and wants to obtain permission after the fact.

The request for \$900.00 was for reasonable storage fee for four months as the tenant had parked his vehicles on areas of the premises which were not included in the tenancy agreement.

Tenant's Claim:

The tenant's monetary claim is for \$3,440.00, which includes labour and supplies of painting the rental unit after moving in, for \$1,280.00, \$1,160.00 for rent for August 2010, and \$100.00 for each month the toilet did not work, from September 2010.

The tenant's relevant evidence included his written summary of claim, the subtenant's statement indicating the toilet had not been working, the 10 Day Notice and the tenancy agreement.

The tenant's relevant testimony included:

The tenant affirmed that he was late paying rent for the five months; however the landlords wanted cash payments and he could not always find them on the first day of the month.

The tenant vacated the rental unit in April, but wants to honour his two year commitment under the tenancy agreement and continue the tenancy. Additionally, the tenant has allowed someone to move into the rental unit and is collecting rent, but that the landlords agreed to allow him to move in. Against their agreement, the landlords now refuse to sign the sub tenancy agreement.

The landlords have been informed at least 10 times that the toilet was not working, in April the landlords sent someone around to fix the toilet and septic system and that it still is not working.

As to the claim for labour and supplies, the tenant submits that the rental unit was not fit to live in at the start of the tenancy, which required the landlord and his wife to clean and repair. The amount claimed is from two estimates he received from different sources for 40 hours of labour. The tenant spent \$320.00 in paint; however no receipt was provided.

In response, the landlords stated they never gave permission for a sub-tenant, the tenant never informed them the toilet wasn't working and denied that the rental unit was uninhabitable at the move in.

Analysis

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

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

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlords' Application

Residential Tenancy Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice to end tenancy under the Act. The landlords established through the evidence, and the tenant confirmed, that the tenant made five late payments in rent since October 2010.

I therefore find that the 1 Month Notice to End Tenancy for the repeated late payment of rent is both valid and enforceable.

As the landlord sufficiently met their burden of proof regarding the late payments of rent, it was not necessary for me to consider or address the other causes listed on the Notice.

I therefore **grant** the landlords an **Order of Possession**, effective on the date listed on the Notice, July 31, 2011, at 1:00 p.m. This order is a **legally binding, final order**, and may be filed in the Supreme Court should the tenant fail to comply with this order.

The landlords have provided no basis or evidence for claiming \$900.00 for parking or storage fee; rather the sum appears intended to offset the monetary claim in the tenant's application. I therefore **dismiss** the landlords' claim for \$900.00.

I find the landlords provided insufficient and inconclusive evidence to prove that the tenant caused the repair issues with the septic tank. I therefore **dismiss** the landlords' claim for septic repair in the amount of \$218.40.

I find the tenancy agreement did not provide for an assessment of fees for late payments of rent. I therefore **dismiss** the landlords' claim for \$106.00 in late fees.

I find the landlords did not submit proof of payment or evidence, such as a receipt, that the tenant owed \$40.00 for a water bill. I therefore **dismiss** the landlords' claim for \$40.00.

As to rent for July and August, the landlords' evidence shows a rent payment for July and I therefore **dismiss** their claim for July rent.

As of the day of the hearing, the landlords have not yet established a loss for the August rent. I therefore **dismiss** their claim for August rent, **with leave to reapply**.

Due to the above, the landlords' entire application for a monetary order is **dismissed** without leave to reapply, with the exception of the claim for rent for the month of August 2011, which is **dismissed with leave to reapply**.

Tenant's Application

As I have upheld the landlords' Notice to End Tenancy for Cause due to the foregoing reasons, I **dismiss** that portion of the tenant's application to cancel the Notice.

As this tenancy is or had ended, I **dismiss** that portion of the tenant's application for an order suspending or setting conditions upon which the landlord may enter the rental unit, an order requiring the landlords to make repairs and emergency repairs, an order allowing the tenant to assign the tenancy or sublet the rental unit, an order for a rent reduction, allow the tenant access to the rental unit

As to the tenant's monetary claims, the tenant accepted that the landlords would pay \$40.00 for the cost of painting supplies and agreed to paint when he moved in. I therefore find that the tenant was fully aware that the amount he received would be

\$40.00, which he declared has been paid by the landlords. Further the tenant has submitted no evidence in support of this claim, such as before and after pictures or receipts. I therefore **dismiss** his claim for \$1,280.00 for labour and supplies of painting the rental unit after moving in.

The tenant stated that he paid \$1,160.00 for rent for August 2010, to secure the rental unit for two years. However, the tenant supplied no evidence of payment or established an entitlement to be reimbursed this amount. I therefore **dismiss** his claim for \$1,160.00.

As to the tenant's claim for compensation of \$100.00 per month since September, I do not find the tenant's testimony credible that he has been asking the landlord since September to repair the toilet. There was no evidence that he put his requests in writing and the landlords disputed that he made the requests. Disputed verbal testimony does not sufficiently meet the burden of proof. I therefore **dismiss** the tenant's claim for \$100.00 per month rent reduction.

Conclusion

The landlords are granted an Order of Possession.

The landlords' monetary claim is dismissed, with the exception of a claim for rent for August 2011, which is dismissed with leave to reapply.

The tenant's application is dismissed for the reasons cited above.

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: July 26, 2011.

Residential Tenancy Branch