



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, CNR, OPR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants filed two Applications. In their first Application they seek an order allowing them access to the rental unit or site and to recover the filing fee for the Application. In their second Application they seek an order cancelling a 10 day Notice to End Tenancy for unpaid rent and to recover the filing fee for the Application. The Tenants amended this to also include a claim for monetary compensation for loss of access and work done for the Landlords.

The Landlords Application seeks an order of possession and a monetary order for unpaid rent, 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.

At the outset of the hearing the parties agreed that the Tenants had vacated the rental unit on July 31, 2011. Therefore, the claims regarding possession of the rental unit do not need to be dealt with, and are dismissed. A final condition inspection report was performed on July 31, 2011, and the Landlords are still holding the security deposit. During the course of the hearing, both parties agreed that the security deposit should be dealt with in this decision.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation for loss of access?

Are the Tenants entitled to monetary compensation for work performed for the Landlords?

Are the Landlords entitled to monetary compensation for unpaid rent?

Background and Evidence

This tenancy began in December of 2010. The Landlords did not use a written tenancy agreement, despite the requirement to do so under the Act. The parties agreed the monthly rent was to be \$1,050.00, payable on the first day of the month. The Tenants paid a security deposit of \$525.00 on December 12, 2010, and moved into the rental unit on or about December 16, 2010.

The dispute between the parties arose over two issues; access to a large shop where the Landlords had woodworking equipment and tools and the eggs produced by chickens at the property.

The Tenants testified that when they first contacted the Landlords about renting the suite, they enquired about a secure storage facility for the male Tenant's carpentry tools and some sports equipment. The Tenants submit that the Landlords agreed to allow the male Tenant, who is a carpenter, to store his tools and other equipment in the shop. Their position is the rent included the suite and safe storage for the tools and equipment.

After the Tenants first moved to the property the male Tenant helped the male Landlord finish the interior of the shop.

The Tenants testified that they had free access to the shop, and there was a door joining the rental unit to the shop. The Tenants testified about one occasion where they discovered the door was locked and they requested it be opened. According to their testimony it was opened immediately by the Landlords.

During the course of finishing the shop, the male Tenant and male Landlord discussed building a chicken coop on the property. Apparently, the male Tenant and Landlord designed and built the chicken coop in early February of 2011.

In early April of 2011, the male Landlord accused the female Tenant of stealing eggs from the chicken coop. The parties had this disagreement over the rights to the eggs which appears to have gone on for much of April. At the end of April, the male Tenant wrote a letter expressing his disappointment to the Landlords over the outcome of events regarding the eggs and other issues.

It appears that during this time the shop was being locked more frequently by the Landlords.

Issues between the parties escalated during May and June, and on June 30, 2011, the Landlords locked the shop and informed the Tenants it was due to security reasons. Apparently the Landlords told the Tenants around this time that it was time to find another place to live, or words to that effect.

On July 1, the male Tenant asked the male Landlord for access to his tools. According to the testimony of the Tenants the Landlord told them "he is finished". The Landlords informed the Tenants that they did not want the male Tenant in the shop and he was to remove all his tools. The Tenants requested a rent reduction for loss of use of the storage space and the Landlords refused this. The Tenants informed the Landlords that they were cancelling the rent cheques and would not be paying the July 2011 rent.

In reply, the Landlords testified that they did not include the shop in the rent for the rental unit. They felt the Tenants would have limited access to the shop for storage purposes only.

The Landlords were upset over the Tenants' requests for free eggs from the chickens. They became very upset with the letter from the male Tenant and felt things were never the same after that letter. The Tenants apparently thought the eggs were to be free to them, since the male Tenant had done so much work on the chicken coop. The Landlords were paying for the chickens and the feed.

The Landlords became concerned when the male Tenant wanted to use the shop to work on a vehicle. The Landlords did not want a third vehicle on the property and did not want the Tenant in the shop.

Problems escalated during July, and eventually the police had to be called to the rental unit property on one occasion to restore the peace.

The Landlords further testified that they felt the Tenants were beginning to run things on the property and the Landlords were losing control of their own rental unit and buildings.

The Landlords were upset when the Tenants failed to pay the July rent and issued the Tenants a 10 day Notice to End Tenancy for unpaid rent.

During the course of the hearing both parties agreed that there had been no arrangements regarding the work done by the Tenant on the interior of the shop or on the chicken coop, in exchange for rent abatement or other consideration regarding the tenancy.

Analysis

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

I find that it was a material term of the oral tenancy agreement between the parties that the Tenants would have access to the shop for storage. I find the access to the shop was included in rent as from the outset of the tenancy the Tenants had unfettered access to the shop. They had expressed this need to the Landlords prior to agreeing to rent the unit. There was a pattern where the Tenants had mostly unlimited access to the shop for several months, however, this access became restricted by the Landlords as a result of disagreements between the parties.

Under the Act the Landlords were not able to reduce the Tenants' access to the shop, unless the Landlords provided the Tenants with 30 days notice and reduced the rent in an amount that was equivalent to the reduction in value of the tenancy agreement. I find the Landlords breached the Act when they failed to do this.

Under section 67 of the Act, I find the Tenants suffered a loss due to this breach of the Act by the Landlords. The Tenants submitted evidence that the storage of the tools cost them \$125.00 at a storage facility. I find that this is an accurate amount for the equivalent reduction in value of the tenancy agreement to the Tenants. Therefore, I award the Tenants \$125.00 for loss of use of the shop for July, subject to the offset below.

The Tenants have also claimed for monetary compensation for the work the male Tenant performed on the Landlords' property, finishing the shop and building the chicken coop. During the course of the hearing, both parties agreed that at the time this work was performed no discussion occurred tying this work to the rent or other consideration for the rental unit. Therefore, I find that there is no jurisdiction or authority under the Act for me to make a determination as this was contracting for work outside of

the tenancy, and these claims are dismissed. The parties should seek legal advice on the legal forum to resolve this portion of the dispute.

As to the unpaid rent for July, I find the Tenants breached section 26 of the Act. The Tenants were not able to withhold rent whether or not the Landlords were complying with the Act or the oral tenancy agreement. The Tenants could only withhold rent if they had an order from an Officer allowing them to do so, or if there was other authority under the Act. There was no such order or authority. Therefore, under section 67 of the Act, I find the Landlords are entitled to the month of rent for July, in the amount of \$1,050.00, subject to the offset below.

The Landlords are awarded \$1,050.00 and the Tenants are awarded \$125.00, and these amounts should be offset ($1,050.00 - 125.00 = 925.00$).

Therefore, I find the Landlords are entitled to monetary compensation in the amount of \$925.00.

I order that the Landlords retain the deposit and interest of **\$525.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$400.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As both parties have breached the Act, I do not award either party their filing fees for the Application.

I also note that much of this dispute would likely have been avoided had the Landlords prepared a written tenancy agreement, which is required under the law, and which could have included terms regarding access to the shop or other facilities at the property. Therefore, I have enclosed a copy of a guidebook to residential tenancies for the use of the Landlords.

Conclusion

The Landlords did not use a written tenancy agreement, and restricted use of a facility and did not follow the Act to do so.

The Tenants breached the Act by withholding rent.

The monetary amounts awarded to each party were offset and the Landlords may keep the security deposit in partial satisfaction of the claim. A monetary order is granted and

issued for the balance due. Neither party was awarded their filing fees for the Applications, as both had breached the Act.

This decision is final and binding on the parties, unless otherwise provided for in the Act and 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: August 10, 2011.

Residential Tenancy Branch