



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, OPR, CNR, MNDC, OLC, RP, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Landlord's application

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order in the amount of \$250.00 for unpaid rent, and a request for recovery of the \$50.00 filing fee.

Tenant's application

The tenants application is a request to cancel a Notice to End Tenancy that was given for non-payment of rent, a request for a monetary order for \$600.00, a request for an order for the landlord to comply with the Residential Tenancy Act, a request for the landlord to make repairs to the unit, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The landlord testified that:

- The tenant failed to pay the full rent for the month of July 2011, paying only \$1000.00 of the \$1250.00 rent, thus leaving \$250.00 rent outstanding.
- Therefore on July 12, 2011 they sent the tenants, by registered mail, a 10 day Notice to End Tenancy for non-payment of rent.
- The tenants have failed to vacate the rental unit and have failed to pay the outstanding rent.
- They are therefore requesting an Order of Possession for September 30, 2011 and an order for the outstanding rent of \$250.00 plus the filing fee of \$50.00 for a total of \$300.00.

The tenant testified that:

- They actually made 2 payments into landlord's bank account towards the July 2011 rent, one for \$1000.00 and one for \$50.00, although they have no way of proving that they made the \$50.00 payment.
- Therefore they have only withheld \$200.00 from the July 2011 rent.
- They believe that they were authorized to withhold the \$200.00 by a previous dispute resolution decision.
- In August of 2010 it was ordered that they could deduct \$100.00 per month from the rent for any months that the leak in the ceiling was not repaired.

- The leak was never repaired, there was only a temporary seal put on the ceiling that stopped any moisture from dripping through into the kitchen for a period of approximately 6 months.
- In June 2011 the ceiling started dripping again and therefore they believe they have the right to deduct \$100.00 per month from the rent for the months of June 2011, and July 2011.
- They further believe that since the leak was never properly repaired, they should actually have been allowed to deduct \$100.00 per month for the six months previous as well, and therefore ask for an order for \$600.00
- They therefore do not believe that there is any rent outstanding to the landlords and they ask that the Notice to End Tenancy be cancelled.
- They further ask for an order for the landlord to repair the rental unit.

In response to the tenant's testimony the landlord testified that:

- They have received no \$50.00 direct deposit into their account.
- Last year when ordered to do so, a repair was done to stop the leaking through to the kitchen.
- This was not a temporary patch, it was professionally repaired at great expense and in fact they had no further complaints from the tenants prior to the tenant deducting money from the July 2011 rent.
- The tenant never informed them that the repair had been unsuccessful, or that a leak was recurring.
- The fact that no water dripped through the ceiling for a full six months shows that the leak was repaired, and that this present leak is obviously a new leak not related to the leak that the dispute resolution officer ordered repaired.
- When informed that the ceiling was leaking again they immediately progressed with repairs and those repairs are ongoing. They fully intend to complete the repairs to ensure the unit incurs no further damage. In fact, repairs were started before the tenants even applied for a repair order.

Analysis

It is my decision that the tenants did not have the authority to deduct any money from the July 2011 rent.

The tenants claim the landlords never repaired the leak in 2010; however it is my finding that since there was no water dripping from the ceiling for a full six months, the landlords had repaired the leaking in 2010.

Therefore since the original dispute resolution officer had only authorized the tenants to deduct money from the rent when the existing leakage repairs had not been completed, the tenants did not have the authority to withhold money from the rent due to the new leak that occurred in June of 2011.

The tenants claim that the leak was never repaired and that it had been leaking into the ceiling even during the six-month period where it did not drip into the kitchen, however they have provided no proof in support of this claim and I find it very unlikely that had the leak been ongoing that it would not have dripped through into the kitchen.

Therefore since the tenants did not have the authority to deduct the money from the rent, I will not cancel the Notice to End Tenancy and this tenancy ends pursuant to that notice.

I also deny the tenants request for \$600.00 compensation.

Further since the landlords had already commenced with repairs prior to the tenants applying for a repair order, I will not issue any repair order as I am convinced that the landlords are attempting to deal with the issues at hand.

I therefore allow the landlords request for an order possession, and an order for the outstanding rent. I allow the full \$250.00 in outstanding rent, because the tenants have provided no evidence of having paid a further \$50.00.

I also allow the landlords request for recovery of their filing fee.

Conclusion

Tenants application

The tenant's application is dismissed in full without leave to reapply

Landlord's application

I have issued an Order of Possession to the landlords for 1:00 p.m. on September 30, 2011.

I have issued a monetary order in favour of the landlords in the amount of \$300.00.

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: August 16, 2011.

Residential Tenancy Branch