



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenants for an order setting aside the notice to end tenancy and a monetary order.

The tenants had originally applied for a monetary order exceeding \$50,000.00 but amended their application to reduce their claim to approximately \$15,000.00, bringing it within the monetary jurisdiction of this tribunal.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the landlord entitled to an order of possession?
Should the notice to end tenancy be set aside?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties were involved in a previous dispute resolution hearing on July 27, 2011 as a result of which the Dispute Resolution Officer set aside a notice to end tenancy dated July 2, 2011 and made a finding that the parties were in a binding tenancy agreement under which the tenants were obligated to pay \$5,000.00 per month in rent beginning on February 1, 2011.

The landlord acknowledged having received the tenants' application for dispute resolution but denied having received their evidence. The tenants testified that they posted the evidence on the door of the landlord's home. The landlord insisted that the tenants should have served their evidence via registered mail as that was how they had demanded that the landlord communicate with them.

The tenants denied having received the landlord's application for dispute resolution. The landlord presented evidence that he had served the documents via registered mail.

The parties testified that they entered into a verbal agreement that rent would be reduced to \$4,800.00 per month. The tenants claimed that this agreement was made in March while the landlord claimed it was made in May.

The landlord testified that the tenants failed to pay \$400.00 of their rent in the month of June and in the month of July, paid just \$2,400.00 of their rent. The tenants testified that they withheld \$400.00 in rent in the month of June because they had paid the landlord \$5,000.00 in each of the months of February and March and felt the rent should have been just \$4,800.00 for those months. The tenants claimed that they attended at the landlord's home and paid the landlord's wife \$2,400.00 in cash on July 17. The landlord testified that his wife was not at home on that date as she was away for 10 days visiting her parents. The tenants then testified that it was possible they had paid another relative of the landlord.

The landlord testified that on July 16 his wife personally served the tenants with a 10 day notice to end tenancy for unpaid rent. The tenants eventually acknowledged having received that notice, although at the start of the hearing the female tenant denied having received a notice dated July 16.

The landlord testified that the tenants paid just \$2,200.00 of their rent in August. The tenants acknowledged that they did not pay the remainder of their rent in August.

The landlord testified that the tenants failed to pay a \$532.61 water bill in 2010 and that it was added to his taxes, which he paid. The landlords sent the tenants a demand letter requesting payment. The tenants made a payment directly to the city. The landlord testified that because the 2010 balance had already been added to his taxes, the tenants' payment was applied against the current year and that as a result, the account now had a credit.

The landlord seeks an order of possession based on the July 16 notice to end tenancy and a monetary order for unpaid rent for June, July and August as well as the 2010 water charges.

The tenants acknowledged having received the notice to end tenancy on July 16 but did not apply to dispute it until August. When asked why they had delayed in disputing the claim, the female tenant responded that she had first made an attempt to file her dispute online on August 1, but the application was not accepted until August 5.

The tenants claim that the landlord has harassed them by repeatedly showing up at the rental unit. The landlord responded that he was attending at the unit to request unpaid rent. The tenants seek an award of \$4,800.00 for “breaking of the lease”, claiming that the landlord has forced them to move out of the unit. They also seek \$2,000.00 in anticipated moving expenses and ask that they be relieved of paying rent for the month of September. They further seek the return of their security deposit.

Both parties seek to recover the filing fees paid to bring their applications.

Analysis

I find that the parties have received each others’ evidence and applications for dispute resolution. The tenants submitted a photograph of their evidence on the landlord’s door and I find it more likely than not that the landlord refused to accept the evidence because it was not served on him in the same manner that the tenants had demanded that the landlord employ. I find that the landlord served his documents via registered mail and I find it more likely than not that the tenants simply neglected or refused to collect the letter.

The parties have a written contract pursuant to which the tenants are obligated to pay \$5,000.00 per month. The landlord freely admitted that he received \$5,000.00 for each of the months of January – April and that he had verbally agreed in May to reduce the rent to \$4,800.00. As this admission goes against the landlord’s interest, I find that it is likely true. I do not accept the tenants’ assertion that the discussion regarding the reduction of rent took place in March. The tenants’ testimony, particularly that of the female tenant, was inconsistent, contradictory and at times nonsensical. I find the landlord’s account of this interaction to be more reliable.

The tenants acknowledged having withheld \$400.00 of their rent in the month of June and claim that it was in compensation for overpayments in February and March. By the tenants’ own version of events, the conversation with the landlord about a rent reduction did not take place until March and therefore would not have impacted rent paid for February. I find that the discussion took place in May and that no overpayments in rent were made. The tenants were not entitled to withhold \$400.00 in June and I find that the landlord is entitled to recover that sum. I award the landlord \$400.00.

The tenants claim to have paid the landlord’s wife \$2,400.00 cash on July 17 but provided no persuasive evidence that they did so. They provided a list of payments they allege to have made, but no corroborating evidence such as bank statements showing that money was withdrawn in July. Further, the tenants were unable to explain

how they could have paid the landlord's wife at her home when she was not at the home during the time in question. I find that the tenants have not proven that they made the payment in July and I find that the landlord is entitled to recover \$2,800.00 and I award him that sum.

I find that the tenants failed to pay water charges of \$532.61 in 2010 and that the landlord paid those charges. I award the landlord \$532.61.

I find that the tenants were personally served with a notice to end tenancy on July 16 and on that date, \$2,800.00 in unpaid rent was owing as well as \$532.61 in water charges. I find that the landlord had grounds to end the tenancy and I dismiss the tenants' claim to set aside the notice to end tenancy. I note that the tenants were required to apply to dispute the notice no later than July 21 and that as they provided no reason why they could not have complied with that timeframe, they are conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the notice.

I grant the landlord an order of possession effective 2 days after service. The tenants must be served with the order. If the tenants fail to comply, the order may be filed in the Supreme Court and enforced as an order of that court.

I find that the tenants failed to pay \$2,600.00 of the rent owing for the month of August and I award the landlord \$2,600.00.

I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring his application and I award him that sum.

The landlord has been awarded a total of \$5,982.61 which represents \$400.00 in arrears for June, \$2,400.00 in unpaid rent for July, \$532.61 in unpaid water charges for 2010, \$2,600.00 in unpaid rent for August and the \$50.00 filing fee. I order the landlord to retain the \$4,150.00 security deposit in partial satisfaction of the claim and I grant him an order under section 67 for the balance of \$1,832.61. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that the landlord did not make a claim for rent for the month of September. He is free to make that claim in the future as well as claim for any loss of income he suffers should the tenants fail to surrender possession of the property as ordered.

I dismiss the tenants' claim in its entirety. I find that the landlord attended at the rental unit to collect rent and that he was entitled to do so. I find that there is insufficient evidence to show that his behaviour amounted to harassment. The landlord did not force the tenants to break the lease; rather the tenants failed to meet their obligations

under the tenancy agreement forcing the landlord to serve them with a notice to end tenancy.

Conclusion

The landlord is granted an order of possession and a monetary order for \$1,832.61. The landlord may retain the security deposit.

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: September 01, 2011

Residential Tenancy Branch