



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, MNDC, FF

Introduction

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

The Landlords applied for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application.

The Tenants applied for an order cancelling the 10 day Notice to End Tenancy, for a monetary order for compensation under the Act or tenancy agreement, 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.

I note that the Landlords issued the Tenants a two month Notice to End Tenancy in July of 2011, with an effective date of September 30, 2011, as the rental unit property has been sold. The Tenants are not disputing the two month Notice to End Tenancy, and testified they are moving out of the rental unit no later than September 30, 2011.

I further note that the parties have come to a mutual agreement to resolve the issue of rent and an order of possession which is described below. Therefore, the issue left to resolve was the claims of the Tenants for a monetary order.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order?

Background and Evidence

The parties entered into a written tenancy agreement in 2004. Unfortunately, neither party provided a copy of this agreement in evidence for this hearing.

The subject rental unit consists of a large dwelling occupied by the Tenants and a second rental unit occupied by a third party renter. There is only one utility meter for the two rental units.

The parties agree that at the outset of the tenancy the rent to be paid was \$2,800.00. The rent was lowered by \$150.00 a month, to \$2,650.00, as the Tenants were to pay the utility bill for the second rental unit occupied by the third party renter.

Approximately two years after the tenancy started, in or about April of 2006, the Landlords installed a washer and dryer in the second rental unit occupied by the third party.

The Tenants were upset that the Landlords would install the washer and dryer in the second unit, as they allege this would result in a larger utility bill for the Tenants to pay. The Tenants wrote the Landlords in May of 2006, at the time of a previous dispute, and stated they were, "... considering additional arbitration concerning the payment of utilities at our residence. The installation of both a washer and dryer to our neighbouring suite without our approval is a violation of our initial lease agreement and, as such, the said utility payments should be renegotiated." [Reproduced as written.]

When the Tenants received the two month Notice to End Tenancy from the Landlords they withheld their August 2011 rent, and informed the Landlords they wanted compensation for the utility payments going back to May of 2006. They did not file to request this amount until after they received the 10 day Notice to End Tenancy for unpaid rent, which the Landlords issued after the August 2011 rent was not paid.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants' claims for compensation for utilities should be dismissed.

I find the principle of estoppel applies to this situation. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted

accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

I find the Tenants established a pattern that existed for over five years, where they did not enforce their legal right regarding utilities. I find the Tenants are estopped from now claiming this from the Landlords, after more than five years without taking any further steps to enforce their rights.

Settlement and Conditional Order of Possession

During the course of the hearing the parties came to an agreement regarding the end of the tenancy under the 10 day Notice to End Tenancy, the two month Notice to End Tenancy, the amount of rent due, and an order of possession, as follows:

Under the two month Notice from July 2011, the Tenants are entitled to one month of free rent before September 30, 2011. The Tenants agree they withheld the August rent of \$2,930.00. During the course of the hearing the Tenants have proven there was an overpayment of rent in the amount of \$318.00 during the tenancy, which was improperly collected by the Landlords.

As a result of these factors, for the months of August and September the Landlords are due \$2,612.00 in total for rent.

Both parties agree that the tenancy will end no later than 1:00 p.m. September 30, 2011. The Landlords will receive an order of possession and the Tenants must vacate the rental unit no later than that date, otherwise the Landlords may enforce the order.

The Landlords consented that would withhold enforcement of the order for possession on the condition that the Tenants pay to the Landlords no later than **5:00 p.m. on September 15, 2011**, the total amount of \$2,612.00 in rent. If the amount is paid by this time and date, the Tenants will continue to live in the rental unit until 1:00 p.m. September 30, 2011.

If the total sum of \$2,612.00 is not paid by 5:00 pm on September 15, 2011, then the Landlords are entitled to enforce the order for possession, which is effective upon two days service. A formal order has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

I order that the parties shall deal with the security deposit and interest of \$1,371.93 in accordance with the Act, at the end of the tenancy.

Due to the various breaches of the Act by both parties, I also find that neither party is entitled to recover their filing fee for the Application.

Conclusion

The monetary claim of the Tenants for utilities is dismissed.

The parties have made an agreement regarding the payment of rent and the end of the tenancy.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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 02, 2011.

Residential Tenancy Branch