



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, OPB, OPC, OPR, CNR, 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.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy that was given for non-payment of rent and a request for recovery of the filing fee.

The tenant's application is a request for an order to cancel the Notice to End Tenancy that was given for non-payment of rent, and a request for recovery of the filing fee.

Background and Evidence

The landlord testified that:

- The tenants failed to pay the September 2011 rent of \$1650.00 and therefore on September 6 they were served with a 10 day Notice to End Tenancy for non-payment of rent.
- The September 2011 rent is still outstanding, and now the full October 2011 rent is also outstanding.
- He is therefore requesting an Order of Possession for as it is possible in an order for the outstanding September 2011 rent.

The tenants testified that:

- They decided to withhold the rent because the landlord has failed to reimburse them for a substantial amount of work that they have done at the rental property.
- The landlord had agreed to reimburse them for any work that they did but has failed to do so.
- Therefore since the amount of work they have done on the rental property exceeds the amount of rent outstanding they decided to withhold the rent.
- There is also clause in the tenancy agreement that allows them to do repairs and deducted the cost from the rent.

They are therefore requesting that the Notice to End Tenancy be cancelled and this tenancy continue.

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

- He never agreed to reimburse the tenants for major work done on the rental property and in fact did not authorize any major work; this work was done without any authorization.
- The clause in the tenancy agreement it offers a discount for repairs done, also states that the tenants should contact the landlord for emergencies or expensive

repairs. The clause obviously does not allow the tenants to do expensive repairs without the landlord's authorization.

Analysis

It is my finding that the tenants did not have the right to withhold the rent.

The tenants have not met the burden of proving that the landlord had ever agreed to deductions from the rent for work done. In the tenants own testimony they stated that the landlord had agreed to reimburse them for work done.

The tenancy agreement does state that the tenants are offered a discount for doing repairs at the rental property however the landlord is correct that it specifically states that the landlord should be contacted for emergencies or expensive repairs.

Further that clause in the tenancy agreement does not state that the tenants can withhold the cost of any repairs from their rent.

Therefore since the tenants did not have the authority to withhold the rent, the full September 2011 rent is still outstanding and I am not willing to cancel the Notice to End Tenancy, and this tenancy ends pursuant that notice.

Conclusion

Tenant's application

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

Landlord's application

I have issued an order possession to the landlord that is enforceable two days after service on the tenants.

I also allow the landlords full claim for the outstanding rent and the filing fee and therefore have issued a monetary order in the amount of \$1700.00.

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: October 05, 2011.

Residential Tenancy Branch