



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenants and the landlords.

The tenants' application is seeking orders as follows:

1. Cancel a notice to end tenancy for unpaid rent; and
2. A monetary order for money owed or compensation.

The landlords' application is seeking orders as follows:

1. An order for possession;
2. A monetary order of unpaid rent; and
3. Recover the filing fee from the tenants.

Preliminary Issue

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the application for dispute resolution, the most urgent of which is the application to set aside the notice to end tenancy. I find that not all the claims on this application for dispute resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants request to set aside the notice to end tenancy and the landlords' application for an order of possession, and a monetary order for unpaid rent at this proceeding. The balances of the tenants' applications are dismissed, with leave to re-apply.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?
Are the landlords entitled to an order of possession for unpaid rent?
Are the landlords entitled to a monetary order?

Background and Evidence

The tenancy commenced on August 1, 2011. Rent of \$475.00 was payable on the first of each month. A security deposit of \$237.00 was paid on August 1, 2011.

Based on the testimony of the landlords' agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on November 2, 2011, by personal service, which was witnessed. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice. The tenants did dispute the notice within the required five days.

The female tenant testified that she has not paid rent for November, 2011. The female tenant further testified that she tried to pay the landlord November's rent at the end of October 2011, but, he refused to take the rent payment. The tenant alleges that the landlord told her that he does not want any rent; he just wanted them out of the rental unit. She also indicated that the landlord could have come to the rental unit to pick up the rent cheque.

The landlords' agent testified that the tenants never offer to pay November's rent. The landlords' agent further testified the tenants were served on October 31, 2011 with a one month notice to end tenancy for cause and at that time the tenants told the landlord that they were not going to pay rent for November 2011.

Analysis

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

The tenants did not pay the outstanding rent set out in the notice to end tenancy. Section 26 (1) of the Act states that a tenant must pay rent when rent is due under the tenancy agreement, whether the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find that tenants did not have the right to withhold rent from the landlord as set out in the Act.

I find that the landlords are entitled to an order of possession effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlords have established a total monetary claim of \$525.00 comprised of rent owed and the \$50.00 fee paid by the landlords for this application.

I order that the landlords retain the deposit and interest of \$273.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$252.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlords are at liberty to apply for further monetary orders.

Conclusion

The tenants failed to pay rent for November 2011.

The landlords are granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim and are entitled to recover the cost of filing their application. I grant a monetary order for the balance due.

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: November 23, 2011.

Residential Tenancy Branch