



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

Some documentary 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 tenants and one brought by the landlord. 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 nonpayment of rent, a request for a monetary order for outstanding rent totaling \$775.00, and a request for recovery of the filing fee.

Tenant's application

First of all it is my decision that I will not deal with all the issues that the tenants have put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with request to cancel a Notice to End Tenancy, and recovery of the filing fee, and I dismiss the remaining claims, with liberty to re-apply.

Background and Evidence

The tenants failed to pay the full January 2012 rent of \$775.00 and therefore on January 3, 2012 the landlord served the tenants with a 10 day Notice to End Tenancy for non-payment of rent.

Landlord testified that:

- The full rent of \$775.00 is still outstanding for the month of January 2012.
- The tenants have not complied with the Notice to End Tenancy and are still in the rental unit.
- They are therefore requesting an Order of Possession for as soon as possible, and an order for the outstanding rent and filing fee.

The tenant testified that:

- They have not paid any rent for the month of January 2012 as they withheld the rent to try and get the landlord to do some work that is needed on the rental unit.
- They feel the Notice to End Tenancy should be cancelled because the rental unit is not fully usable and therefore they have not had full value for their rental.

Analysis

It is my decision that I will not set aside the Notice to End Tenancy.

First of all the tenants did not apply within the five day time limit set out in the Residential Tenancy Act.

Secondly the tenants have withheld the rent without having any authority to do so. Tenants do not have the right to withhold the rent to try to pressure the landlord into doing repairs etc.. The tenant would **first** have to apply for dispute resolution to get at Dispute Resolution Officer's order authorizing them to withhold the rent, or alternately the tenants could apply for a repair order to have the repairs done.

By withholding the rent the tenants have put their tenancy in jeopardy and in this case I will be issuing an Order of Possession to the landlords.

I also allow the landlords monetary claim for the full outstanding rent and filing fee.

Conclusion

Tenant's application

I dismiss the tenants request to cancel the Notice to End Tenancy and this tenancy ends pursuant to that notice. I also order that the tenants bear the \$50.00 cost of the filing fee. The remainder of the tenants claim is dismissed with leave to reapply.

Landlord's application

I have issued an Order of Possession to the landlords that is enforceable two days after service on the tenants.

I have issued a Monetary Order to the landlord in the amount of \$825.00.

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: January 30, 2012.

Residential Tenancy Branch