



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, ERP, PSF, LRE, RR, MND, O, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”) and dealt with cross Applications for Dispute Resolution by the Landlord and Tenants. The Landlord's Application requested an order of possession, a monetary order for unpaid rent, damages to the unit site or property, recovery of the filing fee, and an order to keep the security deposit. The Tenants' Application requested emergency repairs for health or safety reasons, provision of services or facilities as required by law, suspend or set conditions on the landlord's right to enter the rental unit, rent reduction for services or facilities agreed upon but not provided, and recovery of the filing fee.

The Landlord and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

Tenant RW attended the hearing and stated that Tenant JD is his partner. The Landlord provided a copy of the written tenancy agreement into evidence, which names JD as the Tenant. The Landlord and Tenant RW agreed at the hearing that although RW is not named on the tenancy agreement for the rental unit, that he is a tenant of the rental unit who is jointly and severally responsible for the rent along with his partner Tenant JD whom he resides with. Based on the parties' testimony, I find that RW is a tenant responsible for the rental unit and the hearing proceeded.

The Landlord confirmed he had received a copy of the Tenants' Application and Notice of Hearing. The Tenants stated that they had not received a copy of the Landlord's Application. The Landlord testified that he sent both Tenants a copy of the Notice of hearing and his Application by registered mail on January 20, 2012. The Landlord provided the two registered mail tracking receipt numbers at the hearing for JD and RW. I find that the Landlord has properly served the Tenants with the Application and Notice of Hearing in advance of the proceeding.

Emergency Repairs/Repairs

The Tenants stated that the Landlord has not addressed issues such as mould, damages, health and safety, and will not change the locks and provide new keys for the rental unit. The Tenants did not make any repairs to the rental unit and want the Landlord to do so. The Tenants are also seeking to set or suspend conditions on the Landlord's right to enter the rental unit. The Tenants did not indicate that there were any services or facilities being restricted. The Tenants provided no evidence prior to the hearing.

The Landlord claims that the Tenants are responsible for breaking the door to the rental unit which is a fire door and that the Tenants are also responsible for a broken sliding window lock. The Landlord is seeking compensation from the Tenants to repair these items. The Landlord provided a photo of a broken door into evidence.

Both parties disagree on who caused the damage and who is responsible for the repairs. I find that it is incumbent on both parties to cooperate in getting the repairs done at the rental unit immediately. As the Tenants have not made the repairs, it is important that the Landlord do so immediately as the repairs relate to the security of the rental unit. The Landlord is required to provide at least 24 hours written notice in accordance with section 29 of the Act before entering the rental unit to undertake repairs. The entry time provided on the notice must be between 8 a.m. and 9 p.m. as allowed by the Act. If the Landlord provides 24 hours written notice in accordance with the Act, then the Tenants must allow the Landlord access so that he can make the repairs.

If the tenancy is reinstated and the Landlord fails to make the repairs immediately, then the Tenants may make an Application for an order against the Landlord.

Tenants' and Landlord's request for monetary compensation for damage or rent reduction

The primary issue to be decided is whether the tenancy will continue and whether the Tenants have failed to pay rent as required by the Act. As a result, I find that it is appropriate to sever the Tenants' request for a rent reduction at this time and dismiss this request with liberty to reapply. And I find it is appropriate to sever the Landlord's claim for compensation for damages to the rental unit at this time and dismiss this request with liberty to reapply.

Rent for February 2012 claimed by Landlord

I find that the Landlord has prematurely claimed rent for February 2012 on his Application dated January 20, 2012 and the hearing occurred before the date the rent is due. As a result I dismiss the Landlord's claim for February's rent with liberty to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession, a monetary order for unpaid rent, recovery of the filing fee, and an order to keep the security deposit?

Background and Evidence

The parties agree that they have a tenancy which started on November 01, 2010, with a monthly rent of \$850.00 due before the first of each month. The parties agree that the Tenants paid a security deposit of \$425.00 at the time the tenancy commenced. The parties agree that the Landlord served the Ten Day Notice to End Tenancy for unpaid rent at the rental unit by posting it on January 08, 2012. The Landlord provided a copy of both pages of the Notice with their Application in advance of the hearing. The Tenants confirmed that they have received the Notice that was posted on January 08, 2012 at the rental unit, but that they have not paid the rent for January 2012, and the rental unit has not been vacated.

The Landlord states that the Notice was issued after the Tenants failed to pay the rent for January 2012.

Tenant RW stated that his wallet was stolen as a result they have not been able to pay the rent. The Tenants confirmed that they owe \$850.00 in rent for January 2012.

The Landlord is requesting an order of possession, the unpaid rent for January 2012 in the amount of \$850.00, reimbursement of the \$50.00 filing fee, and an order to retain the security deposit in partial compensation for the amounts owed.

Analysis

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

I find that the Tenants were properly served with the Ten Day Notice to End Tenancy for Cause on January 08, 2012 in accordance with the Residential Tenancy Act (the "Act")

and Policy Guideline. As the Notice was posted at the rental unit it was deemed to have been served on January 11, 2012 (3 days).

The Notice is a formal legal document and the Tenants did not pay the rent within five days of receiving the Notice and did not vacate the rental unit. The Tenants did not have an order under the Act allowing them to withhold the rent. The Tenants did not indicate on their Application form that they disputed the Notice or wanted it cancelled.

The Landlord stated on the Ten Day Notice that the Tenants had until January 18, 2012 to vacate the premises, however as the Notice was not deemed served until January 11, 2012, this corrects to January 21, 2012, ten days from the date the Notice was deemed served, pursuant to the provisions set out in section 46 of the Act and the Residential Tenancy Policy Guideline. As the Landlord properly served the Notice on the Tenants and has requested an order of possession, I find that the Landlord is entitled to an order of possession for the rental unit effective two days from the date of service of the order on the Tenants.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the last day of each month. The Tenants do not dispute that they failed to pay the Landlord the rent for January 2012 and that \$850.00 is owed. I find that the Landlord is entitled to a monetary order for the \$850.00 rent owing for January 2012.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance owing to the Landlord to \$900.00.

I order that the Landlord retain the full amount of the security deposit \$425.00 in partial satisfaction of the amount they are owed, which leaves a balance owing to the Landlord of \$475.00. I grant the Landlord an order under section 67 for \$475.00.

Conclusion

The Tenants' request for a rent reduction is dismissed with liberty to reapply.

The Landlord's request for compensation for damages to the rental unit, and rental income loss for February 2012 is dismissed with liberty to reapply.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenants. This order must be served on the Tenants and may be filed in Supreme Court.

I find that the Landlord is entitled \$900.00 for unpaid rent and the filing fee. I order the Landlord to keep the security deposit of \$425.00 and I grant the Landlord a monetary order for balance of the unpaid rent and the filing fee in the amount of **\$475.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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