



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, PSF, MNDC, FF

Introduction

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

The landlords' application is seeking orders as follows:

1. For an order of possession; and
2. A monetary order of unpaid rent.

The tenants' application is seeking orders as follows:

1. Monetary order for compensation for loss under the Act; and
2. To have the landlord provided services.

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.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for loss?

Are the landlords to provide service to the tenants?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on September 5, 2011. Rent in the amount of \$850.00 was payable on the fifth of each month. A security deposit of \$425.00 was paid by the tenant.

Landlords' application

The landlords' agent testified they served the tenants with a one month notice to end tenancy for cause on February 8, 2012, with an effective date of March 7, 2012.

The tenant testified they accepted the notice to end tenancy; however the effective date in the notice is incorrect. The tenant stated they will be out of the rental unit on March 31, 2012 at 1:00 P.M and consent to an order of possession for that date.

The landlords' agent testified the tenants have not paid rent for March 2012 and the landlords are seeking a monetary order for unpaid rent. The landlords' agent states the landlords are also seeking compensation for future lost of revenue.

The tenant testified the landlords have always provided rent receipts. However, when she paid cash for March 2012, rent the landlord, she was told that a receipt for rent would be provided within a couple of days. The tenant states the landlord failed to provide a receipt to her for March 2012, rent.

The landlords' agent argued that the tenants have always been issued receipts for rent payments. The landlord's agent testified a receipt for March 2012, rent was not provided to the tenants as they did not pay rent for March 2012.

Tenants' Application

The tenant testified that as a material term of their tenancy agreement the landlord was to provide laundry facilities. The tenant states the landlords will no longer allow her to use the laundry facilities.

The tenant states she paid \$36.00 to do laundry at the local laundry matt. This is a cost she would not have had to pay if the landlord did not restrict her facilities and is seeking compensation in the amount of \$36.00.

The landlords' agent testified that the agreement to use the laundry facility was not initialled by all parties therefore invalid.

The landlords' agent testified the tenant was tampering with the hot water boiler in the laundry room and could have damaged the boiler. The landlords' agent stated because of the tenant's actions, they had no alternative but to take away the tenants laundry privileges.

The written submission of the landlord states they voluntarily provided laundry to the tenants twice weekly with four hours each time.

Analysis

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

Landlords' Application

The parties agree the tenants were served with a one month notice to end tenancy for cause and the date provided in the notice does not comply with the Act.

Section 53 of the Act states - Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section

In this case, the notice to end tenancy was served on February 8, 2012, and rent is due on the fifth of the month. Therefore, the earliest date permitted under the Act to end tenancy is April 4, 2012. However, the tenants have consented to an order of possession effective March 31, 2012. Therefore, I grant the landlord an order of possession effective March 31, 2012 at 1:00 P.M.

The evidence of the tenant was she paid rent for March 2012. The evidence of the landlord's agent was rent was not paid. The evidence of both parties was the landlord always issued rent receipts. Filed in evidence are copies of rent receipts.

In this case, the tenant alleges she paid March 2012, rent to the landlord. However, there were no copies of bank records to prove the tenant had the money or that the money was taken out of an account. Further, no one testify on the tenants' behalf that they saw the tenant pay the landlord rent. Therefore, I find the landlord is entitled to compensation for unpaid rent in the amount of **\$850.00**.

The landlord's is seeking compensation for loss revenue; however the tenancy has ended in accordance with the Act. Therefore, the landlord is not entitled to claim for loss revenue, except if the premises are un-rentable due to damaged caused by the tenant. Therefore, I dismiss the landlord's claim for compensation with leave to re-apply.

Tenants Application

The parties agree the tenant had access to laundry facilities. The evidence of the landlord's agent was that it was not a material term of the tenancy agreement. Filed in evidence is a copy of an agreement, which is signed by the landlord approving the tenants dates and time for use of the laundry facilities. I find that even though the tenant did not initial that agreement laundry facility was a term agreed upon under this tenancy agreement.

Therefore, I find the landlord was required to provide the tenant with 30 days written notice in the approved form before withdrawing those services and the tenant would have been entitled to a rent reduction for loss of that facility.

As the tenancy has ended, the tenants' application to have the landlord provide laundry facilities is dismissed.

However, the evidence of the tenant was she paid \$36.00 to use laundry facilities elsewhere and those are cost that she would not have incurred if the landlord did not restrict her facilities. Therefore, I find the tenants are entitled to compensation in the amount of **\$36.00** for the cost of having to pay for laundry facilities elsewhere.

Policy Guideline 17 states:

Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single Order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the Order.

As, I have granted the landlords a monetary order in the amount of \$850.00 and I have granted the tenants compensation for loss of facilities in the amount of \$36.00, the tenants compensation will be off-set from the landlords monetary order.

Therefore, I find the landlords are entitled to a monetary order in the amount of \$814.00.

As both parties paid \$50.00 to file their applications and both parties were successful and are entitled to have the other party paying the cost of filing their application. In this case, the amounts of the filing fees are off-set by each other. Therefore, I am not awarding costs to either party.

Conclusion

The tenants' application to have the landlords provide facilities is dismissed.

The landlords are granted an order of possession and a monetary order as set out above.

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: March 27, 2012.

Residential Tenancy Branch