



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC ERP RP LRE OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied to cancel a notice to end tenancy, as well as for an order that the landlord comply with the Act, regulation or tenancy agreement; orders for emergency repairs and repairs; a rent reduction for repairs, services or facilities agreed upon but not provided; and an order setting conditions on the landlord's right to enter the rental unit. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial compensation of the monetary order.

Both tenants, an advocate for the tenants, one landlord and an agent for the landlords participated in the teleconference hearing.

In regard to the tenants' application for emergency repairs, the tenants informed me that in the last few days prior to the hearing the landlord had taken some steps to address the issue of the toilets backing up. The landlord expressed a willingness to discuss the issue with the tenants to ensure that no health and safety issue remained. I determined that there was no exigent emergency issue, and that it would not therefore be necessary to address that portion of the tenants' application at this time.

I informed the parties that that the issue of the notice to end tenancy took precedence, and proceeded to hear evidence only on that issue. I will address the remainder of the applications in the conclusion of my decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on September 1, 2011. The rental property is on an acreage that includes a house and a workshop. The tenancy agreement submitted as evidence shows a monthly rent of \$4500. The tenants signed the agreement on August 29, 2011. The date below the landlord's signature block is September 29, 2011. On February 14, 2012 the landlord served the tenants with a notice to end tenancy for unpaid rent in the amount of \$6,500.

Landlord's Evidence

The tenancy agreement clearly indicates that the monthly rent is \$4500. After the tenants moved into the rental unit in the beginning of September 2011, they refused to pay rent for September. The tenants made partial rent payments on several dates, totalling \$13,450 in rent paid as of February 8, 2012. The landlord acknowledged that they did not issue receipts for the rent.

The landlord and the tenants set up a payment schedule whereby the tenants would pay \$2,500 each month for the months of October, November and December 2011, and then \$5,500 per month for the next six months, to account for monthly rent of \$4,500.

The landlord denied signing any written addendum to the tenancy agreement, and stated that the landlord signed the tenancy agreement on August 29, 2011, not September 29, 2011. The landlord submitted the original tenancy agreement, which the landlord stated was all filled in by the female tenant in pink ink on August 29, 2011.

Tenants' Evidence

At the outset of the tenancy, the landlord told the tenants that the rent would be \$2,000 for the house, \$2,000 for the shop and \$500 for parking. The tenants later refused the parking and the landlord agreed. When the tenants first moved in, they told the landlord they wanted three months to see if it was feasible to license and run a business on the property, and if they could they would then also pay for the shop. On September 29, 2011 the male landlord signed an addendum to the tenancy agreement, which set out this breakdown of rent and the trial basis operation of the shop. The tenants did not submit a copy of this document as evidence for me to consider.

The tenants stated that they paid the rent in cash, and the landlord did not issue receipts. They stated that the landlord's accounting of rent is incorrect, and that the

tenants paid \$50 more than indicated in December 2011 and \$200 more in January 2012.

Analysis

The landlord has the burden of proof to establish that the notice to end tenancy is valid. In particular, the amount of outstanding rent set out on the notice must be correct, and may not contain any amounts other than residential rent. In this case, the evidence of the landlord regarding the amount of rent to be paid was contradictory and unclear. Furthermore, the landlord did not clearly establish what portions of the rent may have been attributed to a commercial tenancy or for parking.

I find that the landlord has not provided sufficient evidence to support the amount of unpaid rent set out on the notice to end tenancy. The notice to end tenancy is therefore cancelled.

As the tenants were successful in the portion of their application regarding cancellation of the notice to end tenancy, I find they are entitled to partial recovery of their filing fee, in the amount of \$25. As the landlord was not successful in the portion of their application regarding the order of possession, they are not entitled to recovery of their filing fee.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The portion of the landlord's application regarding an order of possession is dismissed.

The remainder of both applications is dismissed with leave to reapply.

The tenants are entitled to withhold \$25 from their next month's rent.

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 6, 2012.

Residential Tenancy Branch