



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FF, RR, MNR, MNSD, OPR

Introduction

A substantial amount of documentary evidence, photo 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 tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order based on a Notice to End Tenancy for nonpayment of rent, a request for a monetary order for \$1675.00, and a request for recovery of their \$50.00 filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for cause, a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, a request for a monetary order for \$770.00, and a request for recovery of their \$50.00 filing fee

Background and Evidence

This tenancy began on March 1, 2012 with a monthly rent of \$1550.00 and the tenants paid a security deposit of \$775.00 on that same date.

The tenants were however given a rent reduction of \$300.00 per month pending the completion of certain repairs/improvements to the rental unit.

In July 2012, landlords informed the tenants that the rent would be returning to the full rent starting in August 2012.

The tenants refused to pay the full rent, claiming that the repairs/improvements had not yet been completed and therefore argued that the rent should remain at \$1250.00 per month.

The landlord subsequently served the tenants with two notices to end tenancy. The first was served on September 30, 2012 and is a one month Notice to End Tenancy for cause. The second was served on October 1, 2012 and is a 10 day Notice to End Tenancy for nonpayment of rent.

The landlords testified that:

- The monthly rent for this unit is \$1550.00 per month, and they only agreed to reduce the rent to \$1250.00 per month until the siding was completed on the rental unit.
- The siding on the rental unit was completed in July 2012 and therefore the rent returns to \$1550.00 as of August 2012.
- The tenants have refused to pay the full amount of rent, and therefore they have issued a 10 day Notice to End Tenancy for nonpayment of rent.
- They also issued the one month Notice to End Tenancy for the following reasons:
 - Rent has been paid late twice before, and now, since they have not paid the full rent, it has been late a further four months.
 - The tenants also have an unreasonable number of pets.
 - The tenant's children have disturbed the neighbors by shooting BB guns.
 - The tenant's children have shot arrows into the hot tubs and other property belonging to the landlords.
 - The tenant's cats have caused extensive damage by chewing the hot tub lid, the sprinkler system, the baseboards in the house, and the pond has been destroyed by the dogs.
- They are therefore requesting an order of possession for as soon as possible, and an order to keep the security deposit to cover damages caused by the tenants and their pets.

The tenants testified that:

- The landlords agreed to reduce the rent to \$1250.00 per month until the siding was done, a deck was built, the landlord's vehicles were moved out of the yard, and the storage units were emptied.
- The landlords have only completed the siding, the deck has not been built, landlord's vehicles have not been moved, and the storage units have not been emptied.
- They have only paid the rent late twice, because it is their belief that the rent should still be \$1250.00 per month as the landlords have not completed all of the work agreed upon.
- They do not have an unreasonable number of pets; they have the same number of pets as when they moved into the rental unit.
- Their children did shoot a BB gun, however they have stopped this once they were informed by the neighbors that this was going on.
- They do allow their children to shoot a bow and arrow in the backyard into targets made from hay bales and the children may also have shot arrows into the hot tub, however the landlord informed them they did not want the hot tubs and they were going to be taken out.
- Their dog has chewed the hot tub lid, however the lid was already in very poor condition and as stated above the landlords informed them they were getting rid of them.
- Their dogs may also have chewed a sprinkler head; however they are not aware of this damage.

Analysis

It's unfortunate that the parties did not put their agreement for the reduction of rent in writing, as then there could be no misunderstanding; however in this case the agreement was not in writing, and I believe that this resulted in a misunderstanding.

I accept that the tenants truly believed that the rent was to be reduced until all of the things they have testified to were completed, however it is my finding that there is insufficient evidence to support that belief.

Therefore it is my finding that the rent for this unit should have returned to the full amount of \$1550.00 in August 2012. That being said, it is my decision that since this misunderstanding was the result of the landlord's failure to put the agreement for the reduction of rent in writing, I will set aside the 10 day Notice to End Tenancy. I will however be issuing an order for the rent that was not paid for those months.

It is also my decision that I will not allow the tenants request for a rent reduction, because although there are some repairs that still need to be done on the rental unit, it is my finding that the tenants have not suffered a significant loss of use of the rental unit.

As far as the one month Notice to End Tenancy is concerned, I will be setting aside that notice.

The landlords have only shown the rent has been paid late twice, other than the rent that was not paid fully due to the misunderstanding, and I will not allow those payments to be considered late payments as far as ending the tenancy is concerned.

Having an unreasonable number of pets or significantly interfering with neighbors are not grounds for ending a tenancy, and therefore I will not allow those reasons for ending this tenancy.

As far as the landlords claim of putting the property at significant risk or causing damages or not repairing damages, the landlord has not met the burden of proving these portions of the claim as the landlord has provided no evidence to show what damages have occurred.

Conclusion

Landlord's application

The request for an order of possession is dismissed and this tenancy continues.

I allow the landlords request for outstanding rent of \$300.00 per month for the months of August 2012 September 2012 October 2012 and now November 2012 for a total of \$1200.00.

The request to retain the security deposit for damages is dismissed with leave to reapply at the end of the tenancy.

I order that the tenants bear the \$50.00 cost of the landlords filing fee.

Tenant's application

I allow the tenants request for an order setting aside the 10 day Notice to End Tenancy, and the one month Notice to End Tenancy and this tenancy continues.

The tenants request for a monetary order is dismissed without leave to reapply.

The tenants request to reduce the rent is dismissed without leave to reapply.

I order that the landlord bear the \$50.00 cost of the tenants filing fee; however this amount will be deducted off the amount I have ordered in favor of the landlords.

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 08, 2012.

Residential Tenancy Branch