



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, AAT, CNR, LAT, LRE, MT, OLC, FF

Introduction

Some documentary evidence and written arguments have 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 an order of possession based on a notice to end tenancy for nonpayment of rent, a request for a monetary order for \$15,500.00, and a request for recovery of the \$100.00 filing fee.

The tenant's application is a request to cancel a notice to end tenancy that was given for nonpayment of rent, a request to allow the tenant more time to make an application to cancel a notice to end tenancy, a request for an order for the landlord to comply with the Residential Tenancy Act, a request to suspend or set conditions on the landlords right to enter the rental unit, a request to allow access to the unit for the tenant and the tenants

guests, a request for an order to authorize the tenant to change the locks to the rental unit, and a request for recovery of the \$50.00 filing fee.

First of all it is my decision that I will not deal with all the issues that the tenants have put on their 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 the request to cancel the notice to end tenancy, and the request for recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

The landlord testified that:

- This tenancy began on April 1, 2012 with a monthly rent of \$3100.00.
- The tenants made one payment of \$9,300.00 which covered the rent for the months of April through June 2012.
- The tenants failed to pay any further rent, and therefore on October 2, 2012 he served a 10 day notice to end tenancy.
- The tenants failed to comply with that notice; however they did make a payment of \$3000.00 towards the outstanding rent.

The landlord is therefore requesting an order of possession for as soon as possible, and an order for the remaining outstanding rent totaling \$12,500.00 plus is \$100 filing fee for a total of \$12,600.00.

The tenants testified that:

- This tenancy did begin on April 1, 2012, with a monthly rent of \$3100.00, which the landlord requested be paid in three months installments.

- They therefore made an initial cash payment of \$9,300.00 to cover the rent for the months of April through June 2012.
- They subsequently made a second \$9,300.00 cash payment on August 3, 2012 to cover the rent for the months of July through September 2012.
- They then made a further cash payment of \$3000.00 for the month of October 2012. The landlord agreed to allow them to deduct \$100.00 off the October rent to cover their loss of storage.
- They have not paid any rent for the month of November 2012 because this dispute was already in progress, and when they attempted to contact the landlord to pay the rent he was not available.
- The landlord has not ever given any receipts for the cash paid.

In response to the tenant's testimony the landlord testified that:

- The tenants in did not make a second \$9,300.00 cash payment on August 3, 2012.
- He did not agree to a rent reduction of \$100.00. He had stated that he would reduce the rent if the tenants paid all outstanding rent and signed a new lease however the tenants failed to do either.

Analysis

It is my finding that the tenants have not met the burden of proving that they have paid any rent for the months of July 2012 through November 2012, except for one \$3000.00 payment which the landlord admits to having received in the month of October 2012.

The tenants claim to have made the payments in cash to the landlord; however they have provided no evidence in support of that claim.

It's also my finding that the tenants have not met the burden of proving that the landlord agreed to a rent reduction of \$100.00.

Therefore it is my finding that at this time there is a total of \$12,500.00 in rent outstanding, and since the landlord has served the tenants with a valid 10 day notice to end tenancy, I will not be setting the notice to end tenancy aside, and will be issuing an order of possession and a monetary order to the landlord.

I also allow the request for recovery of the landlords filing fee.

Conclusion

The tenant's application to cancel the notice to end tenancy is dismissed without leave to reapply.

I have issued an order of possession to the landlord that is enforceable two days after service on the tenants.

I've issued a monetary order for the tenants to pay \$12,600.00 to the landlord.

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 28, 2012.

Residential Tenancy Branch

