



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR FF

For the tenants: CNR MNR MNDC ERP RP LAT FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to make emergency repairs for health or safety reasons and to make repairs to the unit site or property, for authorization for the tenants to change the locks to the rental unit, allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The tenants, an agent for the landlord (the “agent”) and a translator for the agent attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The tenants confirmed that they did not submit evidence as part of their application.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on their Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on the tenants’ Application for Dispute Resolution are sufficiently

related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the Notice to End Tenancy and the tenants' request to recover the filing fee at this proceeding. The balance of the tenants' applications is dismissed with leave to reapply, however, the tenants acknowledged that much of their original request had already been heard and dismissed without leave to reapply in a previous decision dated October 11, 2012.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

A fixed term tenancy began on March 1, 2012 and was to expire on February 28, 2013. Monthly rent in the amount of \$1,125.00 is due on the first date of each month. A security deposit and pet damage deposit was paid at the start of the tenancy, however, both deposits have already been addressed in a previous decision dated October 11, 2012.

The landlords have also received a monetary order for unpaid rent for August, September and October 2012 unpaid rent in the decision dated October 11, 2012. The landlords are now seeking a monetary order for \$1,125.00 in unpaid rent for November 2012 as the tenants continue to occupy the rental unit.

During the hearing, the male tenant confirmed that they received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on October 16, 2012 via registered mail. The Notice was dated October 12, 2012 and had an effective date of October 20, 2012. The effective date on the Notice corrects automatically under the *Act* to October 26, 2012. The tenants applied to dispute the Notice on October 19, 2012. The male tenant testified that rent for November 2012 has not been paid.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

A fixed term tenancy began on March 1, 2012 and was to expire on February 28, 2013. Monthly rent in the amount of \$1,125.00 was due on the first day of each month. The tenants failed to pay rent for November 2012. Section 26 of the *Act* requires that tenants

must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, **I find** the tenants breached section 26 of the *Act* and **I find** that the tenants owe rent in the amount of **\$1,125.00** for November 2012.

Given the above, **I find** the Notice is valid as rent was not paid by the tenants when it was due. Therefore, **I dismiss** the tenants' application to set aside the Notice. As the tenants continue to occupy the rental unit without paying rent, **I grant** the landlord an order of possession effective **2 days** after service on the tenants.

I find the tenants' application did not have merit. Therefore, **I do not grant** the tenants the recovery of the filing fee.

I find the landlord's application did have merit. Therefore, **I grant** the landlords recovery of the filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$1,175.00** comprised of \$1,125.00 in unpaid rent for November 2012 and the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,175.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenants and this order may be filed in the Supreme Court and enforced as an order of that court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$1,175.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 26, 2012

Residential Tenancy Branch