



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MT, CNR, MNR, MNDC, RR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order authorizing them to retain the security deposit and a cross-application by the tenants for an order setting aside a notice to end tenancy, an order permitting them more time to file their application to dispute the notice, a monetary order and an order permitting them to reduce their rent. Both parties participated in the conference call hearing.

At the hearing the tenants asked to withdraw their monetary claim as they had not had sufficient time to provide evidence in support of that claim. I permitted the withdrawal of that claim and the hearing proceeded to hear the remaining issues.

At the hearing, the landlord asked to amend her claim to include a claim for loss of income for December. As the tenants should reasonably have known that the landlord could not re-rent the unit while they are still living therein, I allowed the amendment.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Are the tenants entitled to an order permitting them to reduce their rent?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2012, that rent was set at \$1,000.00 per month and that the tenants paid a \$240.00 security deposit. They further agreed that the tenants did not pay rent in the month of October and that on October 29, 2012, the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The parties further agreed that the tenants have paid no rent since the Notice was served.

The tenants testified that they did not pay rent because the landlord has failed to perform required repairs and because they had to spend their rent money on a refrigerator. The tenants argued that the form of the Notice was invalid and stated that they were told by a representative of the Residential Tenancy Branch (the "RTB") that the Notice could not be effective. The tenants filed their application to dispute the Notice on November 26 and testified that they did so because after having received the landlord's application for dispute resolution, they asked the RTB what they should do and were told that they should apply to dispute the Notice.

The landlord seeks an order of possession based on the Notice as well as a monetary order for unpaid rent and loss of income for October – December inclusive. She also seeks an order for \$260.00 of the security deposit which was not paid and for a pet deposit which was not paid.

The tenants claim that they should be granted a retroactive rent reduction because of the landlord's failure to perform repairs.

Analysis

Section 46(4) of the Act provides that upon receiving a notice to end tenancy for unpaid rent, tenants must either pay the rent or dispute the notice within 5 days of receipt. Section 46(5) provides that when tenants fail to comply with section 4, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which in this case is November 9, 2012. Section 66(3) provides that I may not extend the time limit for disputing a notice beyond the effective date of the notice.

Section 52(e) of the Act requires that any notice to end tenancy when given by a landlord be in the approved form. The Notice is on an outdated form, but as it provides all the same information as the current form, I find that it is still effective to end the tenancy. I have arrived at this decision because section 52(e) requires that the Notice be *in* the approved form rather than *on* the approved form. While the tenants claim that they were told not to dispute the Notice, I find this unlikely, particularly as the instructions given by the RTB were radically different once they had received the landlord's application for dispute resolution.

As the effective date of the Notice had already passed by the time the tenants filed their application to dispute it, I am compelled to dismiss the tenants' claim for more time to file their application and their claim for an order setting aside the Notice. I find that the landlord is entitled to an order of possession and I enclose a formal document herewith. The tenants must be served with the order. If the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the tenants acknowledged that they have not paid rent for the months of October, November and December, I find that the landlord is entitled to recover the rental income and I award her \$3,000.00. I dismiss the landlord's claim for the unpaid balance of the security deposit and the unpaid pet deposit as these deposits are not payable at the end of a tenancy.

I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring her claim. I order the landlord to retain the \$240.00 security deposit in partial satisfaction of her claim and I grant her a monetary order under section 67 for the balance of \$2,810.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the tenancy is ending, I dismiss the tenants' claim for a rent reduction. The tenants are free to pursue a monetary claim should they wish to do so.

Conclusion

The tenants' claim is dismissed in its entirety and the landlord is granted an order of possession and a monetary order for \$2,810.00. The landlord will retain the security deposit.

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: December 20, 2012

Residential Tenancy Branch