



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, CNC, OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants are seeking an order to cancel a 10 day Notice to End Tenancy for unpaid rent, to cancel a one month Notice to End Tenancy for cause, for money owed or compensation under the Act or tenancy agreement, for the return of the security deposit, for an order to reduce the rent, and for an order to recover the filing fee for the Application.

The Landlords filed a claim for an order of possession based on the Notices issued for unpaid rent and for cause, and requested monetary orders for unpaid rent, for compensation under the Act or tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Tenants testified that they provided evidence on December 7th or the 10th of 2012, to the Branch for this matter. I explained to the Tenants that I did not have this evidence, and furthermore, that it was not admissible for this hearing as it is late under the rules of procedure.

I also explained to the parties that the most important issues before me involved the allegations of outstanding rent and the possession of the rental unit. I found during the

course of the hearing that the parties had included many unrelated disputes in their respective Applications. Pursuant to section 2.3 of the rules of procedure, I am dismissing the Landlords' claims regarding the Notice to End tenancy for cause and the Tenants' claims for monetary compensation and to reduce the rent, and all these claims are dismissed with leave to reapply.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?

Have the Tenants breached the Act or tenancy agreement, entitling the Landlords to an Order of Possession and monetary relief for rent?

Background and Evidence

This tenancy began August 1, 2012, with monthly rent agreed at \$2,200.00, and the Tenants paid the Landlords a \$1,100.00 security deposit on or about June 22, 2012.

On November 5, 2012, the Landlords served the Tenants personally with a 10 day Notice to End Tenancy for unpaid rent of \$1,100.00 for October and \$2,200.00 for November of 2012, totaling \$3,300.00, and for \$110.00 in unpaid utilities (the "Notice"). The female Tenant acknowledged service of the Notice on November 5, 2012.

The parties are in disagreement over the terms of the tenancy agreement regarding payment of utilities.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Tenants applied to cancel the Notice within the required time limits.

Nevertheless, at the outset of this hearing, the Tenants testified they were in the process of moving out of the rental unit.

The Tenants testified that they had paid the November rent on November 7, 2012, but agreed they did not pay the December rent. The Tenants testified that they provided evidence they paid the November rent on November 7 or 12, 2012; however, that evidence was included in the inadmissible, late evidence which is described above.

The Landlords deny receiving the rent for November. They testified they were paid for ½ of the October rent in or about the third week of October.

The Tenants allege they paid all of the rent for October 2012.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 26 of the Act, the Tenants could not withhold rent unless they had an order from an Arbitrator at the Branch allowing them to do so, or, if the Tenants had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenants had no order, nor did they pay for any emergency repairs. This leads me to find the Tenants had no authority under the Act to withhold rent from the Landlord.

I find that the Tenants have insufficient evidence that they paid the November rent, and therefore, I find the 10 day Notice to End Tenancy for unpaid rent is valid and should not be cancelled. I find the evidence of the Tenants on this issue brought up questions of credibility, since if had they paid the rent on November 7, 2012, they likely would have included evidence of this in their Application or mentioned this fact in the particulars of the Application, which they filed some five days later on November 13, 2012.

Therefore, having found the Tenants have failed to pay rent I dismiss the Tenants' Application to cancel the Notice.

I allow the Landlords' Application for an order of possession and grant and issue an order that the Tenants vacate the rental unit two days after service of the order of possession. This order may be filed in the Supreme Court and enforced as an order of that Court.

As to the matter of October rent, I find the Tenants' credibility was in question on this issue as well, as their testimony lacked consistency, and therefore, **I find the Landlords have established a total monetary claim of \$5,600.00**, comprised of \$5,500 in rent due for ½ of October, and all of November and December 2012, and the \$100.00 fee paid by the Landlords for this application.

I order that the Landlords retain the deposit of \$1,100.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$4,500.00**.

This order 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 Act.

Dated: December 13, 2012.

Arbitrator
Residential Tenancy Branch