



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNC, CNL, CNR, MNR, MNDC, MNSD, OPR, OPC, OLC, RP, PSF, LRE, OPT, AAT, LAT, RR, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on December 19, 2012:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 11, 2013 for:

1. An Order cancelling Notices to End Tenancy – Section 46, 47 and 49;
2. A Monetary Order for the cost of emergency repairs – Section 67;
3. A Monetary Order for compensation or loss - Section 67;
4. An Order compelling the Landlord to comply with the Act - Section 62;
5. An Order for the Landlord to make repairs – Section 32;
6. An Order for the Landlord to provide services or facilities required by law - Section 65; and
7. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70;
8. An Order of Possession – Section 54;
9. An Order allowing access to the unit for the tenant or guests – Section 70;
10. An Order authorizing the Tenant to change the unit locks – Section 70;
11. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65

12. An Order for the return of the security deposit – Section 38;
13. An Order to recover the filing fee for this application - Section 72; and
14. Other.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

This Hearing was convened for an hour following which several of the claims had yet to be heard. Given the extent of claims remaining unaddressed, I find it necessary to reconvene the Hearing to another date. Claims not addressed below will be considered at this reconvened Hearing and the Parties are informed that the findings made in this interim decision are final and binding and not subject to reconsideration at the reconvened Hearing.

The Parties will be notified of the date of the reconvened Hearing by the Residential Tenancy Branch. Failure to attend the reconvened Hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the Arbitrator and the testimony of the Party in attendance at the hearing. Any additional evidence that the Parties intend to rely on for the reconvened Hearing must be served on the other party at least 5 days before the reconvened date.

Issue(s) to be Decided

Are the Notices to end Tenancy valid?

Is the Tenant entitled to a cancellation of any of the Notices?

Is the Tenant entitled to an Order of Possession?

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to orders compelling the Landlord to act in relation to compliance with the Act, making repairs to the unit, and providing services?

Is the Tenant entitled to restrict the Landlord's entry into the unit?

Is the Tenant entitled to an order allowing access to the unit?

Is the Tenant entitled to an order to change the locks on the unit?

Is the Tenant entitled to an order for the reduction in rent?

Background and Evidence

The following are undisputed facts: The tenancy started on August 24, 2011. Rent of \$1,330.00 is payable on the first day of each month. At the onset of the tenancy the Landlord collected \$665.00 as a security deposit. On December 10, 2012 the Landlord served the Tenants with a One Month Notice to End Tenancy for Cause (the "Cause Notice"). The reason given for the cause is: repeated late payment of rent. The effective date of the Cause Notice is January 30, 2013. On December 13, 2012 the Landlord served the Tenants with a 10 day Notice to End Tenancy for Unpaid Rent (the "Rent Notice"). The Rent Notice states that the Tenants failed to pay rent due of \$463.00.

The Landlord states that the Tenant failed to pay rental arrears of \$402.00 in December 2012 and that the amount shown on the Rent Notice was made in error. The Landlord agrees that he signed a formal tenancy agreement with the Tenants on November 14, 2012 noting on the agreement that as of November 29, 2012 all rents were paid in full. It is noted that this tenancy agreement was provided as evidence by the Tenants who signed the agreement on November 1, 2012. The Landlord states that on December 7, 2012 the Tenants paid their full rent for that month.

The Landlord states that the Tenants paid rent late for July, August, September, October, November and December 2012. The Landlord provided banking documents that show that July and August 2012 cheques were returned NSF and that September 2012 cheque had a stop payment placed on it.

The Tenant agrees that the rent was late for July, August and September 2012 and states that the rent for October, November and December were available on the first day of each month but that the Landlord was not available until a few days after to either

pick up the money order or have it delivered. The Tenant does not dispute that January 2013 rent is unpaid.

The Tenant states that there are no emergency repairs required.

Analysis

Based on the Landlord's evidence that all rents were paid prior to the date that the Rent Notice was served, I find that no rent was due and payable at the time the Rent Notice was served and that the Rent Notice is therefore not valid. I find that the Tenant is entitled to a cancellation of the Rent Notice.

Based on the undisputed evidence that the Tenants were late in paying their rent at least three months out of the six months of rent payable prior to the issuance of the Cause Notice, I find that the Landlord has met the onus of proving sufficient cause to end the tenancy and that the Notice is valid. The Landlord is therefore entitled to an Order of Possession. I dismiss the Tenants' claim for a cancellation of the Cause Notice. As the Tenancy will end and given the Tenant's evidence of no existing emergency repairs being required, I find that the Tenants' claims, with the exception of claims for monetary orders for emergency repairs, compensation for damage or loss, the filing fee and other, are no longer valid and I dismiss these claims.

Based on the undisputed evidence that the Tenants have not paid rent for January 2012, I find that the Landlord has established an entitlement to a monetary amount of **\$1,330.00**. The Landlord is also entitled to an Order of Possession effective January 30, 2013. As the Landlord has been successful with its application, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,330.00**.

As the remainder of the claims have yet to be heard, no monetary order in relation to the Landlord's entitlement will be made until the remainder of the Tenant's monetary claims have been determined at the reconvened hearing.

Conclusion

The Hearing is reconvened to another date to be determined.

I grant an Order of Possession to the Landlord effective January 31, 2013.

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: January 24, 2013

Residential Tenancy Branch

